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LEGISLATION RELATING TO FARMLAND DEVELOPMENT RIGHTS

COMPLETED

RIGINAL

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND AGRICULTURAL TAXATION

OF THE

COMMITTEE ON FINANCE UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 1713

MAY 24, 1982

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LEGISLATION RELATING TO FARMLAND DEVELOPMENT RIGHTS

MONDAY MAY 24, 1982

U.S. SENATE,
SUBCOMMITTEE ON ENERGY AND
AGRICULTURAL TAXATION
OF THE COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:14 a.m., in room 2221, Dirksen Senate Office Building, Hon. Malcolm Wallop (chairman) presiding.

Present: Senator Wallop.

[The press release announcing the hearing, background material on Senate bill 1713, the text of S. 1713, and the prepared statement of Senator Mathias follow:]

FINANCE SUBCOMMITTEE ON ENERGY AND AGRICULTURAL TAXATION SETS HEARING ON AGRICULTURAL TAX BILL S. 1713

Senator Malcolm Wallop, Chairman of the Subcommittee on Energy and Agricultural Taxation of the Senate Committee on Finance, announced today that the Subcommittee will hold a hearing on the agricultural tax bill S. 1713 on Monday, May 24, 1982.

The hearing will begin at 9:30 a.m. on May 24, 1982 in room 2221 of the Dirksen Senate Office Building.

The bill that will be considered at the hearing is: S. 1713 (Senator Mathias) would permit a tax free rollover of the gain from the sale of farmland development rights to a State or political subdivision, would provide a one-time $100,000 exclusion of the gain of the sale of farmland development rights by a taxpayer over age 55, and would allow a charitable contribution on gain foregone in the sale of farmland development rights.

DESCRIPTION OF S. 1713

Relating to

INCOME TAX TREATMENT OF SALES OF FARMLAND DEVELOPMENT RIGHTS TO A STATE OR LOCAL GOVERNMENT UNDER A QUALIFIED FARMLAND PRESERVATION PROGRAM

Scheduled for a Hearing
Before the
Subcommittee on Energy and Agricultural Taxation
of the
Committee on Finance
on
May 24, 1982

Prepared by the Staff
of the
Joint Committee on Taxation

May 21, 1982
JCX-20-82

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INTRODUCTION

The Senate Finance Subcommittee on Energy and Agricultural Taxation has scheduled a hearing on S. 1713 (sponsored by Senators Mathias, Sarbanes, Hatfield, Jackson, and Kasten) on May 24, 1982. The bill deals with tax treatment of sales of farmland development rights to State and local governments under qualified farmland preservation programs.

The first part of the document is a summary of the bill. The second part is a description of the bill, including present law, issues, explanation of provisions, effective dates, and revenue effects.

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I. SUMMARY OF THE BILL

There are no provisions in present law specifically governing the tax consequences of sales of farmland development rights for purposes of preserving farmland. However, generally applicable provisions of present law may provide favorable income tax treatment for such transactions. For example, gain from the exchange of farmland (or interests in farmland) is not recognized in the case of a like-kind exchange for similar property (Code sec. 1031), and gain from the exchange or disposition of farmland in an involuntary conversion is not recognized if the owner receives similarly used property or reinvests the proceeds from the involuntarily converted property in such similarly used property (sec. 1033). In addition, gain realized on sale of a farm residence which is the taxpayer's principal residence may qualify for nonrecognition treatment if the proceeds are invested in another such residence (sec. 1034), or for an exclusion from income of up to $125,000 of such gain in the case of an individual who has attained age 55 (sec. 121). Also, under present law, charitable deductions are permitted for contributions to qualified organizations of farmland or conservation easements in farmland (sec. 170).

S. 1713 would provide special rules for nonrecognition of gain realized from the sale of farmland development rights to a State or local government under a qualified farmland preservation program if the proceeds were reinvested in property used for farming purposes. The bill also would provide a limited exclusion from income of up to $100,000 of gain from such a sale by an individual who had attained age 55. In addition, the bill would permit a charitable deduction for the excess of the fair market value of farmland development rights over the gain from sale of those rights to a State or local government under a qualified farmland preservation program.

The provisions of the bill would apply to sales of farmland development rights after 1980.

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II. DESCRIPTION OF THE BILL

A. Rollover of gain from sale of farmland development rights

Present Law

There is no provision in present law specifically providing for nonrecognition of gain realized from the sale or other disposition of farmland development rights. However, gain from the sale of farm property is not recognized in several general situations under present law.

First, present law provides for nonrecognition of gain realized in an exchange of property held for productive use or investment for property of a like kind, also to be held for productive use or investment ("like-kind" exchanges) (Code sec. 1031). Thus, property used for farming purposes may be exchanged for other similarly used property without recognition of gain except to the extent that money or other property is received in the exchange.

Second, present law provides for nonrecognition of gain realized from an involuntary conversion of property (sec. 1033). Under this provision, for example, gain realized on condemnation of property, or gain from insurance proceeds resulting from the destruction of property by fire or theft, is not recognized to the extent that the funds received are invested in property "similar or related in service or use" to the converted property within two years after close of the taxable year in which the gain is realized. Likewise, if property is involuntarily converted directly in exchange for other similarly used property, no gain is recognized.

Third, present law provides for nonrecognition of gain realized from the sale of a principal residence, including a farm residence, in certain circumstances (sec. 1034). The taxpayer must purchase and use a new principal residence within the period beginning two years before and ending two years after the sale of the old residence. Additionally, the gain is not recognized only to the extent that the cost of purchasing the new residence equals or exceeds the adjusted sales price of the old residence.

Issue

The issue is whether gain from the qualified sale of farmland development rights should be deferred if the farm owner reinvests the sale proceeds in other property used for farming purposes.

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Explanation of Provision

Under the bill, if certain requirements are satisfied, owners of farmland could sell the development rights to the land to a State or local government under a qualified farmland preservation program without recognizing taxable gain from the transaction. A qualified farmland preservation program would be a program established under State or local law that provides for the purchase of farmland development rights by a State or local government in order to assure that property devoted to farming purposes continued to be used for those purposes.

No gain would be recognized by the seller to the extent that within the period beginning 18 months before and ending 18 months after the sale, the seller purchased "qualified farming property." Qualified farming property would include real property, improvements to real property, and any asset chargeable to capital account used for farming purposes. Thus, under the bill, if an owner of farmland sold development rights and bought additional farmland or other farm property, such as a new barn or a tractor, for an amount at least as great as the gain on the sale of the development rights, none of the gain would be recognized for income tax purposes.

If the cost of the replacement property did not equal the amount realized on the sale of the development rights, gain would be recognized to the extent amounts were not reinvested. If the qualified farming property purchased with the proceeds of the sale of development rights were used for purposes other than farming (i.e., converted to another use) within the five-year period beginning on the date of the sale of development rights, the previously unrecognized gain would be included in the property owner's income in the year the property was so converted.

Effective Date

This provision of the bill would apply to sales of farmland development rights occurring after 1980.

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B. One-time exclusion from income of gain from sale of farmland development rights

Present Law

There is no provision in present law specifically providing for exclusion from income of gain realized from the sale of farmland development rights. Present law does, however, permit exclusion of up to $125,000 of gain realized from the sale of a principal residence, including a farm residence, by an individual who has attained the age of 55 and meets certain other requirements (sec. 121). 1/ This exclusion is elective by the taxpayer, and is available for only one sale or exchange by the taxpayer or the taxpayer's spouse.

Issue

The issue is whether individuals who have attained age 55 should be permitted to exclude from income certain gain realized on the sale of farmland development rights.

Explanation of Provision

Under the bill, an owner of farmland who has attained age 55 could exclude up to $100,000 2/ of gain from the sale of farmland development rights to a State or local government under a qualified farmland preservation program. A qualified farmland preservation program would be a program established under State or local law that provided for the purchase of farmland development rights to assure continued use of the land for farming purposes.

The exclusion would be available only if the seller had owned, and used for farming purposes, the farmland for which development rights were sold for periods aggregating three years or more of the five-year period ending on the date of the sale. The exclusion would apply to only one sale by the taxpayer or the taxpayer's spouse.

Effective Date

This provision of the bill would apply to sales of farmland development rights after 1980.

1/ The maximum exclusion is $62,500 in the case of a married individual filing a separate return.

2/ The maximum exclusion would be $50,000 in the case of a married individual filing a separate return.

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C. Charitable contribution deduction for gain foregone by reason of sale of farmland development rights

Present Law

Subject to certain limits, present law allows an income tax deduction for the value of property transferred for charitable purposes (sec. 170). State and local governments are qualified recipients of deductible charitable gifts if the gifts are to be used exclusively for public purposes. The amount of the charitable deduction is generally the fair market value of the contributed property on the date of the gift. 1/

In the case of a "bargain sale" (i.e., a sale for less than fair market value), the deduction is generally equal to the excess of the fair market value of the property over the sales proceeds. Additionally, in the case of a bargain sale, the donor/seller of the property is required to allocate his basis in the property between the sale and gift portions of the transfer in determining the gain from the sale (sec. 1011(b)).

In general, no charitable deduction is allowed for transfers of less than the entire interest in property owned by the transferor unless the transfer is in certain specified forms, including a qualified conservation contribution (sec. 170(f)). A qualified conservation contribution includes an easement or other restriction granted in perpetuity, which, among other purposes, acts to preserve open space (including farmland) for scenic enjoyment of the general public or pursuant to a clear Federal, State, or local government conservation policy and will yield a significant public benefit. Thus, present law permits a charitable deduction for a gift in perpetuity of farmland development rights to State and local governments if the gift is pursuant to a clearly defined governmental conservation policy and yields a significant public benefit. These deductions are allowable for income, estate, and gift tax purposes.

1/ Under present law, the deduction otherwise allowable for charitable contributions must be reduced in certain cases. Among these reductions are the portion of the unrealized gain on the property that would have been ordinary income had the donor sold the property, certain portions of that amount which would have been capital gain had the property been sold (in the case of gifts of tangible personal property for certain used or gifts to certain private foundations), and certain interest (secs. 170(e) and (f)).

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Issue

The issue is whether an income tax deduction should be allowed for contributions of farmland development rights to State and local governments when the contributions do not qualify as qualified conservation contributions, for example, because the development rights are not transferred in perpetuity.

Explanation of Provision

The bill would allow a taxpayer who sells farmland development rights to a State or local government under a qualified farmland preservation program to claim a charitable deduction for income tax purposes equal to the excess of the fair market value of the farmland development rights over the gain realized 2/ on the sale. 3/ Thus, an income tax charitable deduction for certain bargain sales of farmland development rights would be allowed whether or not the requirements for a charitable deduction for qualified conservation contributions (sec. 170(f)(3)) were satisfied.

Effective Date

This provision of the bill would apply to sales of farmland development rights after 1980.

D. Revenue effects

It is estimated that this bill will reduce Federal budget receipts by $25 million annually.

2/ Under the general rules for determining the amount of charitable deduction on a bargain sale, it appears that the measure of the contribution should be the fair market value of the development rights over the amount realized on the sale (rather than over the gain realized on the sale).

3/ A qualified farmland preservation program would be a program under which a State or local government purchased farmland to assure its continued use for farming purposes.

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II

97TH CONGRESS
1ST SESSION

S. 1713

To amend the Internal Revenue Code of 1954 to permit the rollover of gain from the sale of farmland development rights to a State or a political subdivision thereof under a farmland preservation program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 7, 1981

Mr. MATHIAS (for himself, Mr. SARBANES, Mr. HATFIELD, Mr. JACKSON, and Mr. WILLIAMS) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend the Internal Revenue Code of 1954 to permit the rollover of gain from the sale of farmland development rights to a State or a political subdivision thereof under a farmland preservation program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ROLLOVER OF GAIN PERMITTED.

(a) IN GENERAL.—Part III of subchapter O of chapter 1 of the Internal Revenue Code of 1954 (relating to common nontaxable exchanges) is amended by adding at the end thereof the following new section:

"SEC. 1041. ROLLOVER OF GAIN FOR SALE OF FARMLAND DEVELOPMENT RIGHTS.

"(a) NONRECOGNITION OF GAIN.—If a taxpayer sells farmland development rights to a State or a political subdivision thereof under a qualified farmland preservation program, and within the period beginning 18 months before the date of such sale and ending 18 months after such date, qualified farming property is purchased by the taxpayer, then gain on the development rights sale shall be recognized only to the extent that the amount realized by the taxpayer on such sale exceeds the taxpayer's cost of purchasing such qualified farming property.

"(b) DEFINITIONS.—For purposes of this section—

"(1) FARMLAND DEVELOPMENT RIGHTS.—The term 'farmland development rights' means the right of the owner of real property to use that property for purposes other than farming purposes.

"(2) QUALIFIED FARMLAND PRESERVATION PROGRAM.—The term 'qualified farmland preservation program' means a program which—

"(A) is established under the law of a State or a political subdivision thereof for the purpose of assuring that property currently devoted to farming purposes will continue to be devoted to such purposes, and

"(B) provides for the purchase of farmland development rights by the State or a political subdivision thereof in order to carry out that purpose.

"(3) FARMING PURPOSES.—The term 'farming purposes' shall have the same meaning as in section 2032A(e)(5).

"(4) QUALIFIED FARMING PROPERTY.—The term 'qualified farming property' means—

"(A) any real property,

"(B) any improvement on real property, or

"(C) any item chargeable to capital account,

which is used by the taxpayer for farming purposes.

"(c) RECAPTURE.—

"(1) IN GENERAL.—If a taxpayer who has claimed the benefit of subsection (a) in connection with the sale of farmland development rights—

"(A) devotes the property from which the farmland development rights were sold to a use other than farming,

"(B) sells or exchanges such property for a use other than farming, or

"(C) uses the qualified farming property purchased during the period described in subsection (a) for purposes other than farming purposes

within the 5-year period beginning on the date of sale of such farmland development rights,

then there shall be included in the taxable income of the taxpayer for the taxable year an amount equal to the amount not recognized under subsection (a).

"(2) SALE OR EXCHANGE FOR USE OTHER THAN FARMING.—For purposes of paragraph (1)(B), a taxpayer shall be treated as having sold or exchanged property for a use other than farming if the taxpayer knew that the property was going to be devoted by the person acquiring such property, directly or through another party or transaction, to purposes other than farming purposes.".

(b) CLERICAL AMENDMENT.—The table of sections for such part is amended by adding at the end thereof the following new item:

"Sec. 1041. Rollover of gain from sale of farmland development rights.".

SEC. 2. ONE-TIME EXCLUSION OF GAIN FROM SALE OF FARMLAND DEVELOPMENT RIGHTS BY INDIVIDUAL WHO HAS ATTAINED AGE 55.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to items specifically excluded from gross income) is amended by redesignating section 128 as 129 and by inserting after section 127 the following new section:

"SEC. 128. ONE-TIME EXCLUSION OF GAIN FROM SALE OF FARMLAND DEVELOPMENT RIGHTS BY INDIVIDUAL WHO HAS ATTAINED AGE 55.

"(a) GENERAL RULE.—At the election of the taxpayer, gross income does not include gain from the sale of farmland development rights (as defined in section 1041(b)(1)) to a State or a political subdivision thereof under a qualified farmland preservation program (as defined in section 1041(b)(2)) if—

"(1) the taxpayer has attained the age of 55 before the date of such sale, and

"(2) during the 5-year period ending on the date of the sale, the property from which the farmland development rights were sold has been owned and used by the taxpayer for farming purposes (as defined in section 2032A(e)(5)) for periods aggregating 3 years or more.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—The amount of the gain excluded from gross income under subsection (a) shall not exceed $100,000 ($50,000 in the case of a separate return by a married individual).

"(2) APPLICATION TO ONLY 1 SALE.—Subsection (a) shall not apply to any sale by the taxpayer if an election by the taxpayer or his spouse under subsection (a) with respect to any other sale is in effect.

"(c) ELECTION.—An election under subsection (a) may be made or revoked at any time before the expiration of the period for making a claim for credit or refund of the tax imposed by this chapter for the taxable year in which the sale or exchange occurred, and shall be made or revoked in such manner as the Secretary shall by regulations prescribe. In the case of a taxpayer who is married, an election under subsection (a) or a revocation thereof may be made only if the spouse joins in such election or revocation.

"(d) SPECIAL RULES.—

"(1) PROPERTY HELD JOINTLY; PROPERTY OF DECEASED SPOUSE.—For purposes of this section, the rules set forth in paragraphs (1), (2), (4), (6), and (8) of section 121(d) shall apply to sales to which this section applies.

"(2) PROPERTY USED IN PART FOR FARMING.—In the case of property only a portion of which, during the 5-year period ending on the date of the sale, has been owned and used by the taxpayer for farming purposes for periods aggregating 3 years or more, this section shall apply with respect to so much of the gain from the sale of such property as is determined, under regulations prescribed by the Secretary to be attributable to the portion of the property so owned and used by the taxpayer.".

(b) CLERICAL AMENDMENT.—The table of sections for such part is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 128. One-time exclusion of gain from sale of farmland development rights by individual who has attained age 55.
"Sec. 129. Cross references to other Acts.".

SEC. 3. CHARITABLE CONTRIBUTION DEDUCTION ALLOWED FOR GAIN FOREGONE BY REASON OF SALE OF FARMLAND DEVELOPMENT RIGHTS.

Section 170 of the Internal Revenue Code of 1954 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsections (i) and (j) as subsections (j) and (k), respectively, and by inserting after subsection (h) the following new subsection:

"(i) SALE OF FARMLAND DEVELOPMENT RIGHTS.—In the case of a taxpayer who sells farmland development rights (as defined in section 1041(b)(1)) to a State or a political subdivision thereof under a qualified farmland preservation program (as defined in section 1041(b)(2)), the taxpayer shall be treated, for purposes of this section, as having made a charitable contribution to the State or a political subdivision thereof in an amount equal to the amount by which—

"(1) the fair market value of the property with respect to which the farmland development rights were sold (determined, as of the day before the date on which such rights were sold, on the basis of the highest and best permissible use of such property) minus

the value of such property as farmland (determined as of such date), exceeds

"(2) the gain from the sale of the farmland development rights (determined without regard to section 1041).".

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to sales occurring after December 31, 1980.

STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR.

Mr. Chairman, as this subcommittee well knows, agriculture is America's largest industry. It employes as many as 17 million people, and it accounts for one out of five private sector jobs. It has assets valued at more than $900 billion.

Our country leads the world in agricultural exports. In 1981, exports came to nearly $44 billion, giving a tremendous boost to our otherwise sagging balance of trade. And all signs point to a growing demand for American food as we develop new markets in the Middle East and China.

Yet today, this industry, which employs more workers than the auto, steel, and transportation setors combined, is seriously threatened. Every year we convert three million acres of farmland to nonagricultural uses. In the past decade, our suburbs have swallowed up farmland equivalent in size to the state of West Virginia.

To slow this dangerous trend, several States have started farmland preservation programs to help farmers resist the financial pressures to sell their prime farmland to developers. Under these programs, the State or local government pays a farmer cash for the development rights to the land. In exchange, the farmer agrees not to sell the land for development purposes.

As the Chairman knows, my bill would supplement these local programs and encourage wider participation in them. It was drafted in consultation with James Clark, the distinguished president of the Senate of Maryland, who is a farmer himself and an untiring champion of farmland preservation. Mr. Musselman has testified this morning on Maryland's farm preservation program.

Specifically, S. 1713 would exempt the State's cash payment from capital gains taxation, provided the farmer rolls over that money into improvements in the farm or into buying more farmland. The bill also provides a one-time capital gains exemption on the payment to the farmer if he is over 55 years old. Another provision allows the difference between the fair market value of the development rights and the amount received from the State to be deducted as a gift for tax purposes. Both provisions will also help us preserve the family farm.

S. 1173 will encourage farmers to participate in the State farmland protection programs, and will foster the creation of similar plans across the country.

In the Third Punic War, Cato the censor sent the Roman General Scipio to destroy Carthage. After a 3-year siege, the city fell and Scipio razed it and plowed salt into the surrounding fields. True to Cato's instructions, he wanted to make sure Carthage would "lie desolate forever." And it has.

Our own open country and farmland are now under siege. I hope we can reverse the trend and keep our land open, fertile, and productive. Modern Tunisia can blame the Romans for the loss of Carthage. We will have no one to blame but ourselves.

I understand that the Treasury Department has testified against the bill. I want the chairman to know that.

I am open to suggestions for revising and improving the bill. The idea behind it is simple and straightforward, but we must act promptly. In the few moments I've spent testifying, we've lost 30 acres of farmland. It has been plowed under and replaced by suburban crabgrass and urban sprawl. We must protect our Nation's great agricultural resources so we can feed our own people and many others around the world.

Senator WALLOP. Good morning.

I am informed by staff that Senator Mathias is running late. Therefore, we will proceed with the hearing. Should he show up, we will hear his testimony when he does. If he doesn't, we will insert his testimony in the record as if he had been here to deliver it.

The purpose of the hearing this morning is to receive comment from administration and public witnesses on S. 1713, introduced by Senator Mathias, Senators Sarbanes, Hatfield, Jackson, and Kasten.

Before we hear from the scheduled witnesses I would like to offer a few comments on our national need to encourage farmland preservation. And I believe that this legislation will assist in that effort.

Most of you are aware through the estate tax changes enacted as part of last year's Economic Recovery Tax Act that we have made some significant progress in the fight to save the family farm and to keep American farmland devoted to agricultural production.

We have eliminated the widow's tax which forced the sale of productive farmland, because the Tax Code discriminated against American farm wives.

We have reduced the tax burden on farm and ranch estates by requiring that land be valued on the basis of present use rather than the price it would command were the land subdivided and developed, while at the same time requiring that the land be used for agricultural purposes.

In addition, we have dramatically increased the threshold which must be crossed before estate taxes are due.

These changes are of some significant importance and will make a contribution toward saving productive farmlands from asphalt parking lots and concrete shopping centers which each year consume more and more of our most fertile land.

More should be done, and more can be done. As each year passes we lose another 3 million acres of farmland to nonagricultural use. It is a trend which must be stopped if we expect to adequately feed future generations while at the same time making expected contributions to resolving the ever-growing problem of world hunger.

I believe that the legislation which is the subject of this hearing offers some viable alternatives to assist in preserving our basic farm resources. And it does so without the needless involvement of the Federal bureaucracy.

One of the key provisions of the legislation is the rollover concept, which holds some promise. It provides that if a farmland owner sells development rights to his or her property to a State or local government under a qualified farmland preservation program, no gain would be recognized by the seller to the extent that within the next 18 months he or she reinvest in qualified farming property. It is a concept which not only provides an incentive to protect land from development but also encourages additional investment in productive property.

Other provisions regarding the tax treatment of the sale of development rights by sellers 55 or older and the tax treatment of charitable contributions should also provide economic incentives to make farmland preservation an attractive alternative to sales for commercial or housing development.

I would congratulate Senator Mathias on his efforts in the area and look forward to the hearing.

The first witness is Mr. William McKee, Tax Legislative Counsel for the Department of Treasury, Washington, D.C.

STATEMENT OF MR. WILLIAM S. McKEE, TAX LEGISLATIVE COUNSEL, DEPARTMENT OF TREASURY, WASHINGTON, D.C.

Mr. McKEE. Thank you very much.

Mr. Chairman, I am pleased to have the opportunity to present the views of the Treasury Department on S. 1713, which would provide special income tax treatment to the sales or part sales or part gifts of farmland development rights.

The background of this bill is that it is an outgrowth of programs of some State and local governments to halt the growth of the development of local farmland. Under these programs cash payments are made for what are essentially easements which would restrict the development of farmland for nonfarm purposes.

The current law governing these treatments, absent S. 1713, is that the farmer who would sell the easement would get cost-recovery treatment. In other words, the cash which he would get from the State or local government would be tax free simply as a return of his basis until such time as he had recovered his entire investment in the farmland. Then only the excess of those payments would be taxable. Moreover, the excess would generally be taxable at favorable capital gains rates.

Also under current law, any gift of the portion of the value of the farmland development rights in excess of the cash which the farmer received for these payments could be deductible, under present law, under the rules of section 170(h) dealing with conservation easements.

In order to qualify for a deduction under present law the gift of the farmland development rights would have to meet three tests: First, it would have to provide a significant public benefit; second, the farm or the easement over the farm would have to provide the public with either scenic enjoyment, or the easement would have to further a clear governmental conservation policy. Finally, the easement would have to be in perpetuity.

The rules governing contributions of scenic easements were most recently visited by Congress in 1980, and these rules specifically deal with farmland.

Now, turning to the provisions of S. 1713. First, section 1 provides for the nonrecognition of gain on the sale of farmland development rights if, within 18 months of the sale the proceeds are reinvested in qualified farming property, which includes both real and personal property used for farming.

If the farm is sold or otherwise ceases to be used for farming, or if the qualified property ceases to be used for farming, there is a recapture of the tax benefits if the property ceases to be so used within the 5-year period.

Section 2 of the bill provides a permanent $100,000 exclusion from the sale of farmland development rights if the taxpayer is age 55 years or older.

Finally, section 3 provides special rules for the calculation of a charitable deduction when the value of the farm development rights exceeds the gain realized on the sale. The value of the gift is calculated by taking the highest and best use of the farm and then subtracting its value as farmland, thereby computing the net value of the gift of the farmland development rights.

Although Treasury recognizes the validity of the goal of preserving our Nation's farmland, we must nevertheless oppose S. 1713.

In summary, we oppose the nonrecognition provisions because the present law governing the cash paid for the transfer of the farm development rights is already quite favorable in that tax is paid only if the farmer receives cash in excess of his investment in the farmland, and the excess, again, is capital gain.

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Moreover, we question whether the policies of nonrecognition applicable elsewhere in the code are applicable in this case. We see no rationale for the exclusion of $100,000 of gain for taxpayers 55 and older. We question seriously the charitable provisions in that they do not have the safeguards of present law, of section 170(h), and because we believe that the valuation provisions of this bill have serious flaws.

Moreover, we remind the subcommittee that Congress has revisited this area as recently as in 1980.

Specifically, turning to the provisions of section 1 of the bill, the general nonrecognition provision contained in the bill is quite similar to that contained in section 1033 of present law dealing with the treatment of involuntary conversions and in section 1034 of present law dealing with rollover of gain on the sale of a taxpayer's principal residence.

From a technical point of view, we are troubled by the fact that the bill does not provide for a basis reduction of the amount of gain which is realized but not recognized. That is the technique in most rollover provisions; that is, the basis of the property is reduced so that upon its sale in the future a gain is recognized. The bill, rather than use the traditional basis-deduction referral scheme uses a recapture scheme which says that the deferred gain is recaptured if the farm or the farmland development property ceases to be used for farming purposes within a 5-year period.

Thus, under the bill, what is normally a deferral type of approach is converted to a total exemption if the farmer holds on to the farm for at least 5 years.

Second, from a policy perspective we seriously question whether the policies behind sections 1033 and 1034, which are the more typical rollover provisions, are applicable here.

Sections 1033 and 1034 are provisions based upon the notion that the particular taxpayer has not cashed in on his or her investment. Rather, under section 1033 the notion is that events beyond your control have forced an involuntary conversion, and that the taxpayer should be able to reinvest the proceeds without the payment of tax in property similarly related in service and use. Under section 1034, dealing with principal residences, the exigencies of modern life which cause our population to move frequently require that upon the sale of one principal residence the taxpayer is given a reasonable period of time, 2 years under present law, to reinvest the proceeds in another house.

In both of these cases the taxpayer at the end of the day is in essentially the same position as he was before the event that caused the conversion of the property into cash.

In this particular case, in S. 1713, the circumstances are such that the taxpayer voluntarily conveys the farmland development rights for cash. He still owns the same farm that he owned before the transaction. He is entitled to reinvest the proceeds in more farming property, either in another farm or in farming equipment. So at the end of the day, under the provisions of S. 1713, the taxpayer ends up with more property than he had when he started off, unlike the situation in sections 1033 or 1034.

Finally, with respect to need, we again point out that the present rules governing the transfer of these rights, which provide very

generous cost-recovery provisions and capital gains to the extent that the proceeds are in excess of basis, are very generous, and we question whether there is any need for this provision.

Turning to section 2, we simply don't see any reason why $100,000 of gain from the sale of farm development rights should be totally tax free for taxpayers 55 years or older.

The limited protections contained in section 1 of the bill, which are designed to insure that the farm continues to be used for farming purposes, are not applicable in the case of sales by taxpayers in this age group.

Finally, with respect to the charitable provisions, section 3 of the bill, from a technical perspective, has, we assume, a significant drafting error. The deduction is calculated by subtracting from the fair market value of the rights transferred the amount of gain realized. As I have noted, in many if not most cases, the farmer who transfers the rights will have no gain. So, under the provisions of this bill, a farmer who is able to get 100 percent of the value of the farm development rights in cash, tax free, would also get a charitable deduction, measured by the same 100 percent of the value of the rights transferred. This would be a classic case of dramatic overstatement of the measurement of the charitable deduction. In the facts that I gave there would be no charitable gift at all, and yet the taxpayer would be entitled to a substantial charitable deduction.

From a policy perspective, we are quite concerned that the safeguards of present section 170(h) are not present in the bill. Section 170(h), dealing with conservation easements, once again specifically applicable to farmland, contains certain public benefit requirements and requires that the easement be granted in perpetuity. We feel these provisions are both sound. We believe that section 170(h) draws an adequate line for distinguishing between gifts to charities which are entitled to a charitable deduction and those which are not.

Finally, the charitable provisions contain substantial valuation problems. The standard used in the bill is that the measurement of the gift would be to value the farm using its highest and best use, and then subtract its value as farmland.

The Senate Finance Committee report to the 1980 legislation which amended section 170(h), which is discussed in my written statement, worries a great deal about the potential for abuse by mismeasuring the value of the property under a highest-and-best-use formula.

Under the Finance Committee report, a number of other factors are inserted into the calculations, such as the likelihood that the farm will in fact be developed, what the present zoning restrictions are, and other laws which could possibly affect the ability of the farmer or somebody else to in fact develop the farmland.

We would strongly suggest that these types of safeguards are also appropriate to any provision such as S. 1713.

For these reasons, the Treasury Department opposes S. 1713. I would be very happy to answer any of the questions which you might have.

[The prepared statement of William S. McKee follows:]

For Release Upon Delivery
Expected at 9:30 A.M. E.D.T.
May 24, 1982

STATEMENT OF WILLIAM S. MCKEE
TAX LEGISLATIVE COUNSEL
DEPARTMENT OF THE TREASURY
BEFORE THE
SUBCOMMITTEE ON ENERGY AND AGRICULTURAL TAXATION
OF THE SENATE FINANCE COMMITTEE

Mr. Chairman and Members of the Subcommittee:

I am pleased to have the opportunity to present the views of the Treasury Department on S. 1713, which would provide special income tax treatment for sales or part sales/part gifts of farmland development rights.

Background

S. 1713 is an outgrowth of programs adopted by certain state and local governments to halt the development of local farmland. Under these programs, the governmental unit will pay a farmer cash for all or part of the value of farmland development rights. These rights in essence consist of an easement restricting the farmer's right to sell his land for development or other nonagricultural purposes or to himself convert the land to nonagricultural purposes. S. 1713 prescribes rules governing the tax treatment of such transactions.

The Internal Revenue Service has ruled (Rev. Rul. 77-414, 1977-2 C.B. 299) that under current law, in the case of a sale by a taxpayer of development rights in agricultural property, the amount realized on such sale should be applied to reduce the basis of the entire property. Only the excess, if any, of the amount realized over the taxpayer's basis in the entire property to which the development rights attach is recognized as gain. In general, any gain recognized is taxable at favorable capital gains rates.

In the case of a gift to charity of development rights, current law generally denies a deduction for charitable contributions of such partial interests in property. However, a taxpayer may deduct the value of an easement over real property, including farmland, that is granted in

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perpetuity to preserve open space, if such preservation will yield a significant public benefit and is either for the scenic enjoyment of the general public or is pursuant to a clearly delineated governmental conservation policy. Factors to be considered in determining whether the public benefit test is met are: (1) the uniqueness of the property; (2) the intensity of land development in the area; (3) the consistency of the proposed open space use with public programs for conservation in the region, such as programs for water supply protection; and (4) the opportunity for the general public to enjoy the use of the property or to appreciate its scenic values. S. Rep. No. 96-1007, 96th Cong., 2d Sess. 12 (1980).

The deductibility of contributions of development rights in farmland to a state or local government would depend upon whether this public benefit test is met and upon whether the purpose of preserving the land as farmland would be for the scenic enjoyment of the general public or for some clearly delineated conservation policy. Further, the development rights must be granted in perpetuity to qualify for deduction treatment. Assuming that the requirements for the charitable contribution deduction are met, the taxpayer could sell the easement to a state or local government for less than its fair market value and take a charitable deduction for the excess of the easement's fair market value over the sales proceeds.

Description of S. 1713

Section 1 of S. 1713 provides that, as a general rule, any taxpayer who sells farmland development rights to a state or local government will not recognize any income from this sale if, within a period of 18 months before or after such sale, the taxpayer invests at least the amount of the sales price in "qualified farming property." The term "qualified farming property" is defined broadly to include any real property, any improvement on real property or any item chargeable to capital account which is used by the taxpayer for farming purposes.

Any gain unrecognized by virtue of section 1 would be recaptured if the taxpayer were himself to use either the property from which the development rights were sold or the qualified farming property for other than farming purposes within a 5-year period beginning with the date of sale. Recapture would also occur if the taxpayer were to sell or exchange the property from which the development rights were sold for a use other than farming within a 5-year period. For this purpose, a taxpayer would be treated as having sold or exchanged property for a non-farming purpose if he knew the property sold would be so used by the purchaser.

Section 2 of S. 1713 provides a one-time exclusion from

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gross income for up to $100,000 of gain from the sale of farmland development rights by a taxpayer who is 55 years of age or older as of the date of sale.

Section 3 of the bill provides that where the value of farmland development rights sold to a state or local government exceeds the gain realized on the sale (determined without regard to the special nonrecognition rule), the taxpayer would be permitted a charitable contribution deduction for the difference. For this purpose, the value of the farmland development rights is deemed to be equal to the fair market value of the property determined on the basis of the highest and best permissible use of such property less the value of such property as farmland.

Discussion

While Treasury recognizes that the goal of preserving this nation's farmland may have merit, we are opposed to S. 1713. Existing law already provides very favorable income tax treatment for amounts realized on the sale of farmland development rights, since the taxpayer is permitted to reduce the sale proceeds by his full basis in the farmland before reporting any gain on the sale. Any gain that is reported is generally taxable at the favorable capital gains rate. We do not believe that there is any valid reason to provide nonrecognition treatment for amounts received in excess of the taxpayer's basis. Furthermore, we fail to see any rationale for providing a complete exclusion of $100,000 of gains realized on the sale of farmland development rights by taxpayers aged 55 and over. Additionally, we oppose the provisions of S. 1713 relating to the charitable contribution deduction on "bargain sales" of farmland development rights because such provisions provide no means of ensuring that contributions qualifying for the deduction will yield a significant public benefit and because the valuation method prescribed would permit excessive deductions.

I would now like to comment specifically on the various sections of the bill.

Section 1

Section 1 of S. 1713, by providing nonrecognition of gain where proceeds of the sale of farmland development rights are reinvested in qualified farming property, attempts to parallel sections 1033 and 1034 of the Code. Those sections provide nonrecognition of gain where the proceeds from the involuntary conversion or condemnation of property or the sale of a personal residence are reinvested in qualifying property. Both sections 1033 and 1034 provide that the basis of the replacement property is reduced by the gain that is not recognized in the prior transaction. In

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contrast, section 1 of S. 1713 does not provide for any reduction in basis of the qualified farmland property in which the proceeds of the sale of the farmland development rights are reinvested. Such a basis adjustment is necessary if the unrecognized gain is to be deferred rather than permanently excluded from tax. Presumably, the recapture provision in section 1 of the bill is intended to deal with this problem. However, this provision is deficient because it provides for recapture only for a 5-year period and, in any event, does not provide for recapture in the event the replacement property is sold.

Even if the basis of the replacement property were reduced by the amount of the unrecognized gain, we would still oppose section 1 of the bill. We believe that sales of farmland development rights involve none of the policy considerations that support nonrecognition treatment under sections 1033 and 1034. The policy underlying section 1033 is that it is not appropriate to tax a person who is forced to replace property which has been involuntarily converted or condemned. To the extent the taxpayer uses any proceeds received from the conversion for replacement property, his economic position has not changed. Similarly, the policy underlying section 1034 is that in our mobile society, it is not appropriate to tax individuals upon the sale of a personal residence to the extent proceeds are used to replace that residence. In both cases, the taxpayer cannot be said to have cashed in on his investment in the original property. By contrast, the transaction covered by S. 1713 is a voluntary sale of farmland development rights and the subsequent purchase of either or both real and personal property used for farming. We would submit that a taxpayer in these circumstances has in effect cashed in on his investment in his farmland to the extent of the development rights sold.

Moreover, sales of farmland development rights under existing law should produce little or no taxable gain in most cases since the taxpayer is permitted to offset the sale proceeds by his full basis in the property before reporting any gain on the sale. In cases where the sale proceeds exceed the taxpayer's full basis, section 1 of the bill would permit nonrecognition of income realized by a taxpayer merely for agreeing not to do something which, in any event, he may have had no current intention of doing. There is no valid reason for providing nonrecognition treatment in such cases.

Section 2

Under section 2 of the bill, a taxpayer who is aged 55 or older would be able to exclude up to $100,000 of gain from a sale of farmland development rights without regard to whether the sales proceeds are reinvested in qualified farming property. This provision would simply grant a

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windfall to taxpayers who have reached a given age and who receive these payments. We see no logical reason supporting this exclusion, particularly in view of the favorable tax treatment accorded to these sales under existing law.

Section 3

Section 3 of S. 1713 goes further by providing that, in addition to nonrecognition treatment, a taxpayer may obtain the tax benefit of a charitable deduction for the value of the property rights sold in excess of the gain realized. Under current law, the deduction permitted for bargain sales to charity is limited to the excess of the fair market value of the property over the amount realized on the sale. As indicated above, it would appear that there would be little or no gain realized in most cases, since the taxpayer would be able to recover his full basis in the property before realizing any gain. Therefore, under the rule prescribed by S. 1713, a taxpayer could receive full cash value for his development rights and still be entitled to a charitable contribution deduction equal to his cash proceeds even though in these circumstances no gift was made. Thus, we assume that the description of the amount of the charitable contribution in section 3 is a drafting error and that the intent is to provide a deduction for the difference between the value of the development rights and the amount paid by the governmental unit (rather than gain realized on the sale). If, contrary to our assumption, section 3 is intended to provide a charitable deduction for the excess of the value of the development rights over the gain realized (and not merely the excess over the sales proceeds), section 3 could give the taxpayer a charitable deduction for an amount substantially in excess of the benefit passing to the state or local government that acquires the development rights. We would object vehemently to that result.

Under current law, to be deductible as a charitable contribution, a gift must benefit the public. As indicated above, a taxpayer may take a charitable contribution deduction for the contribution of an easement granted in perpetuity to preserve open space (including farmland) if such preservation will yield a significant public benefit and is either for the scenic enjoyment of the general public or is pursuant to a clearly delineated public policy. By requiring that the easement be in perpetuity and by subjecting such gifts to the "significant public benefit test," Congress sought to minimize abuse and to ensure that the property interests acquired through the Federal tax system would inure to the benefit of the public at large. Section 3 of S. 1713 would permit a deduction for the granting of an easement in the case of farmland without regard to the safeguards of current law. We would question whether in all cases the public would benefit in any significant way from the gift of development rights on

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farmland wherever situated. A public benefits test and enforcement standards should be provided to ensure that gifts qualifying for the deduction serve a significant public purpose and that such purpose is in fact carried out.

Moreover, it is very difficult to value partial interests in property and deductions based on such value can be easily abused. It is in large part because of the serious problems of valuation and administration that deductions for gifts of partial interests in property are generally not allowed. S. 1713 attempts to deal with this problem by providing that the value of the development rights equals the difference between the value of the property determined on the basis of its highest and best use and the value of the property as farmland. We believe this rule could overstate the value of development rights. A better rule would define the value of such rights as the difference between the value of the property before and after the sale of the development rights taking into account such factors as the likelihood that the property in question will be developed and the amount of time that may lapse between the date of transfer and the time of development. This is generally the approach adopted by Congress in permitting a deduction for qualified conservation easements. Thus, in the Senate Finance Committee Report on the Tax Treatment Extension Act of 1980, in discussing the charitable contributions deduction for conservation easements, the Senate Finance Committee stated that

> . . . conservation easements are typically (but not necessarily) valued indirectly as the difference between the fair market value of the property before and after the grant of the easement. . . . Where this test is used, however, the Committee believes it should not be applied mechanically.
>
> For example, where before and after valuation is used, the fair market value of the property before contribution of the easement should take into account not only the current use of the property but also an objective assessment of how immediate or remote the likelihood is that the property, absent the restriction, would be developed. Where applicable, valuation of the property before contribution should take into account zoning, conservation or historic preservation laws that would restrict development of the property. Valuation of the transfer should take into account the impact of the transfer on other property, as in the case where restrictions on one parcel of property serve to increase the value of adjacent property.

S. Rep. No. 96-1007, 96th Cong., 2d Sess. 14-15 (1980).

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These considerations would be ignored by the rule prescribed in S. 1713 for computing the charitable deduction.

Finally, we would seriously question whether a gift of farmland development rights by a taxpayer who has no current intention of developing his property should qualify as a charitable contribution. In such cases, the gift can be made at no current cost to the taxpayer. In effect, there would be very little charity in such charitable giving.

* * *

For these reasons, the Treasury Department opposes S. 1713. I would be happy to answer your questions.

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Senator WALLOP. Thank you, Mr. McKee.

I noticed that you did change your statement in one respect from the written one. The written one has a statement in it which I find a little bit alarming from the standpoint of the official Treasury policy, if it is their expression of that policy.

I will read the first sentence of the paragraph labeled "Discussion," on page 3.

"While Treasury recognizes that the goal of preserving this Nation's farmland may have merit"—surely the Treasury Department of the United States, especially under a Reagan administration, would recognize that it "does" have merit as a goal.

Mr. MCKEE. Senator, the concern we have in using that rather cautious language is to avoid getting into the debate about the economic policy between trying to preserve attractive land for farming as opposed to some other use that our economists might say ought to be furthered. We certainly do recognize that the goal of this Nation of preserving the farm is a valid goal. We don't mean to suggest anything else by that.

Senator WALLOP. I understand some of the questions you raise on this, but it occurs to me that a more appropriate way of traveling on that road is one which would join Treasury in the goal rather than let somebody else concoct a goal that meets Treasury's mood. I don't mean to be going at you specifically, but I find it difficult to deal with Treasury, no matter who comes in, on that very basis.

I think that to criticize certain provisions of the bill is a totally proper and valid exercise with the expertise that exists over there, but merely to reject it out of hand as a cost consideration without offering any kind of things which would be satisfactory to the Treasury Department to achieving the goal of preserving farmlands, especially since we are losing it at the rate of 3 million acres a year, would be very helpful.

Mr. MCKEE. Well, again, Senator, we are sensitive to that. We would remind you that present law does provide very favorable tax treatment to these kinds of programs. After all, a farmer that has a farm and sells the development rights to that farm pays no taxes at all until he has recovered his entire investment in the farm. If a farmer paid $100,000 for his farm many years ago, he can sell off the farm development rights for $100,000 in cash and pay no tax at all.

Secondly, again, the Senate Finance Committee and the Congress analyzed the tax treatment of the granting of easements with respect to farmland as recently as 1980. Many, many farmers that would participate in a program such as those contemplated by the bill would in fact be entitled to a charitable deduction under present law. They simply must comply with the rules of section 170(h), which admittedly has some constraints.

But, clearly, legislative history shows that the Congress was very, very worried about where the line ought to be drawn in terms of granting a charitable deduction for basically a promise not to do something with property. We feel that that line was carefully considered, and we think it was properly drawn at that time. We see no reason to nudge that line over.

Senator WALLOP. I was part of that. I don't believe it is a question of nudging it over. I don't believe that we went as far as some of us would like to have gone.

I would be inclined to request here that, if we are going to make a mistake in this instance, we don't make a mistake on the side of recouping revenue to the Government but make a mistake on the side of preserving the one means by which this country and the world will be fed.

Mr. MCKEE. We are certainly sympathetic to your views. I think, as a Department, we would say, as I suggested, the line was appropriately drawn. The one thing we do ask quite strongly is that if you do decide to move the line over that you continue to incorporate the safeguards of section 170(h) because of the potential for abuse in this area.

Senator WALLOP. I don't quarrel with that. I think that makes sense. Clearly, you want to save something that is productive, that is not just a pile of rocks that would be perhaps more useful as a shopping center but is for the public benefit.

I think it can be carefully crafted.

I appreciate your coming down this morning.

Mr. MCKEE. Thank you very much.

Senator WALLOP. The next witness is Mr. Alan R. Musselman, executive director of Maryland Agricultural Land Preservation Foundation, also representing the Maryland Department of Agriculture in Annapolis.

STATEMENT OF ALAN R. MUSSELMAN, EXECUTIVE DIRECTOR, MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION, MARYLAND DEPARTMENT OF AGRICULTURE

Mr. MUSSELMAN. Thank you for the opportunity to testify.

I am the manager, the director, of a statewide program to preserve agricultural land, and I am indeed not in a position to debate what was just directed to you in terms of the Treasury Department's analysis.

We are looking at this bill from a very practical State standpoint. We have been in the process of implementing an agricultural land preservation program since 1977. Actually, we began in 1979. Since that time there have been more than 60,000 acres in Maryland included in agricultural preservation districts, which are voluntary agreements between landowners and the statewide foundation not to develop land without any financial involvement.

Once that land is in a district and that agreement exists, the landowner may offer to sell to the foundation an easement which is in perpetuity. That easement is valued on the basis of the difference between fair-market value and agricultural-use value.

The program is also competitive, in terms of easement sale applications. We rank those applications that have the greatest ratio of value to asking price. So we rank those applications that are discounted below value with priority.

Thus far we have made acquisitions on over 100 farms in Maryland of easements, of preservation easements, at a cost in the range of $850 to $900 an acre. In my written statement I have suggested that it seems that the State government and the Federal

Government, to some extent are working at cross purposes. One of the holdbacks for participants in Maryland's program, dealing with the public sector, the State government, is the impact of capital gains taxes on the sale of the development rights easement.

Basically what is happening is that the landowner is changing some equity in land into cash equity. The number of different kinds of circumstances that exist among landowners who are selling easements differ as much as there are different landowners. Many are reinvesting the proceeds from the sale of an easement back into the farm to improve the operation. Many others are in the process of retiring, and a young farmer is in the wings to buy the farm.

The provisions of S. 1713 would very much assist us in accomplishing a very well conceived agricultural land preservation program in Maryland. We are also aware that there are many other States that have a similar kind of easement-acquisition program in effect, where the bill would be very beneficial.

Again, it seems that we are working at cross purposes. We feel that the bill, S. 1713, would very much resolve that conflict, and we urge your favorable consideration of the bill.

[The prepared statement of Alan R. Musselman follows:]

MARYLAND DEPARTMENT OF AGRICULTURE

Testimony on S 1713

TO: The U.S. Senate Committee on Finance - Subcommittee on Energy & Agriculture

Monday, May 24, 1982

Alan R. Musselman
Executive Director
MD Agricultural Land Preservation Foundation
MD Dept. of Agriculture

Members of the Subcommittee,

Thank you for the opportunity to testify on S 1713. I am representing Wayne A. Cawley, Jr., Secretary, MD Department of Agriculture. We urge the passage of S 1713.

It has been found that state and local governments and federal government are working at cross purposes in the matter of compensatory agricultural land preservation through easement acquisition. The bill before you will correct this conflict.

Since 1977, the MD Agricultural Land Preservation program has been in effect and entails the voluntary establishment of agricultural preservation districts and within those districts the voluntary sale of development rights easements. Having been implemented since 1979, there are now more than 400 productive MD farms in preservation districts and the Foundation has acquired, or has under contract status, easements on approximately 100 farms comprising 15,000 acres.

Maryland's farmland preservation efforts were borne by a wide recognition that agricultural land resources were being lost to development at an alarming rate (more than 1.5 million acres over the past twenty years) and that, were the trend to be continued unabated, agriculture would be lost as an economically,

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Alan R. Musselman
MD Agricultural Land Preservation
Foundation
May 24, 1982

viable industry and as a valuable way of life and both environmental benefits of agricultural land and fresh, local food production capability would be severely diminished.

The commitment to farm preservation in Maryland is strong and the financial commitment is growing in both state government and local governments.

The acquisition of permanent development rights easements in the State has cost over $13 million to date on a voluntary, competitive basis on the part of landowners at an average cost of approximate $900 per acre.

Easement sale applicants currently pay full federal capital gains income taxes on the proceeds of easement sale to the State of Maryland. This tax minimizes both the attractiveness and ultimate success of Maryland's program.

In addition, a landowner who willingly sells an easement to the State for an amount which is less than the value of the easement cannot deduct the difference between the sale price and the appraised value of the easement as a charitable donation from federal income taxes. Such a deduction as provided for in S 1713 is extremely important for success of both state and local preservation efforts.

Accompanying this testimony is a brief, detailed explanation of Maryland's program and a sample of land and easement values and relative asking prices from the current fiscal year's activities.

We encourage your favorable action and will be glad to respond to any questions you may have.

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Enclosures

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Maryland Agricultural Land Preservation Foundation

A Summary

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Introduction

Maryland has always put great value on its agricultural land. It was the first state to utilize use-value assessment of agricultural land, and more recently, the Committee on the Preservation of Agricultural Land has studied the issues and made recommendations about how to preserve Maryland's agricultural land.[1] These recommendations, with modifications, have been incorporated into bills which have been considered by the Maryland Legislature in 1975, 1976 and 1977. The most recent proposal was passed by the Maryland Legislature in 1977, signed into law, and became effective July 1.

[1] Maryland Senate Joint Resolution No. 43, LR3104, March 2, 1973, directed the secretary of agriculture to undertake a comprehensive study and make recommendations regarding the preservation of agricultural land. Secretary Y. D. Hance appointed the Committee on the Preservation of Agricultural Land. Its final report was submitted August 12, 1974.

The Law in Brief

The law[2] authorizes the creation of voluntary districts where commercial subdividing is restricted and agricultural and woodland activities are not. To be approved and included in a district, the land must meet criteria on location, acreage, productivity, etc. The landowner must agree to keep his land in agricultural use for 5 years in order for final approval to be made. After 5 years, the landowner may terminate his property's inclusion in a district by giving notice 1 year prior to actual termination.

When and if funding is provided, the owner of land in an agricultural district may petition to sell an easement to the Maryland Agricultural Land Preservation Foundation. The land must meet the same criteria that are used in evaluating the creation of a district in order for the Foundation to purchase the easement. The landowner makes a bid to the Foundation to indicate the selling price he will accept for the easement. He can also repurchase the easement if continued farming becomes unfeasible.

The program is administered by the Maryland Agricultural Land Preservation Foundation, the county governing body and the county Agricultural Preservation Advisory Board.

[2] Annotated Code of Maryland, Agriculture, Title 2. Department of Agriculture, Subtitle 5, Maryland Agricultural Land Preservation Foundation, Sections 2-501 through 2-515.

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Administration of the Maryland Agricultural Land Preservation Foundation Act

Maryland Agricultural Land Preservation Foundation. The Foundation will be administered by a Board of Trustees. Membership on the board will be nine at-large members appointed by the governor. Five of the nine must be farmers' representatives from different parts of the state. (A farmer is someone actively engaged in farming or retired from active farming.) The Maryland Agricultural Commission, Maryland Farm Bureau and Maryland State Grange may each submit a list of three nominees; one board member will be appointed from each list. One of the nonfarmer board members will be a representative of the Department of State Planning. Board members will serve 4-year terms.

The functions of the Foundation will include final approval of districts, purchase of easements and adoption of rules, regulations and procedures necessary to implement the provisions of the law.

County Agricultural Preservation Advisory Board. In each county with productive agricultural land, the county governing body shall appoint an Agricultural Preservation Advisory Board with five members. Three of the five will be owner-operators of commercial farms who earn 50 percent or more of their income from farming. County board members will serve 5-year terms.

The duties of the county board include advising the county governing body with respect to the establishment of districts and the approval of easement purchases, reviewing districts and land on which easements have been acquired and, in general, promoting the preservation of agricultural land.

Agricultural Districts

Establishment. To form an agricultural district, the landowner(s) must file a petition—along with maps of the proposed district and a description of current land use—with the county governing body. Once it has been submitted, the petition goes through the following procedures:

1. Upon receipt, the county governing body refers the petition and other material to both the Agricultural Preservation Advisory Board and the county planning and zoning office.
2. Within 60 days of referral, the Agricultural Preservation Advisory Board must recommend approval or disapproval of the proposed district to the county governing body. The board must also advise it as to whether or not the proposed district meets the following criteria:
   a) Productivity, acreage, and location necessary for continued farming.
   b) Sufficient size to promote continued availability of agricultural suppliers and markets.
   c) Outstanding productivity and significant size if the land is within a 10-year water and sewer district.
   d) Following activities must be permitted by the county regulations:
      (1) Farm use of land.
      (2) Operation of farm machinery, at anytime.
      (3) All normal agricultural operations performed in accordance with good husbandry practices which do not cause bodily injury or directly endanger human health. This requirement includes sale of farm products produced on the farm where the sales are made.
3. Within the same 60 days, the county planning and zoning agency must advise the county governing body regarding the compatibility of the proposed district with existing and approved county plans and policy. The agency must recommend approval or disapproval of the district.
4. A public hearing on the petition shall be held by the county governing body if either the Agricultural Preservation Advisory

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Board or the county planning and zoning agency recommends approval of the proposed district.

5. The county governing body shall recommend to the Foundation approval or disapproval of the proposed district.
6. The Foundation shall render its decision on the petition within 60 days of receiving it.
7. If the petition is approved by the Foundation, the landowner must agree to keep his land in agricultural use for at least 5 years.
8. The county governing body establishes the district by an ordinance.

Maximum elapsed time between the landowner's filing a petition with the county governing body and Foundation's decision is 180 days. There are no time limits on the landowner's filing the agreement and the passing of an ordinance by the county governing body.

Rights and Requirements. Once land is included in a district, it must stay in agricultural use for 5 years in accordance with the agreement filed with the Foundation. The landowner may offer to sell an easement on his land, which will prohibit residential subdivision for commercial purposes. But even though the land is in a district, the landowner does have the right to sell the land at any time.

Termination. After the district has been in existence for 5 years, the landowner who has not sold an easement may terminate his particular property from inclusion in a district by notifying the Foundation with 1 year's notice.[3] In the event of severe economic hardship a property may, with proper approval, be withdrawn from a district prior to completion of the required 5-year existence.

[3] If the easement has been sold, see section on *Termination of Easements*, page 11.

Sale of Easements

An owner of agricultural land located in a district may make written application to sell an easement to the Foundation. The Foundation may purchase easements with the money in the Maryland Agricultural Land Preservation Fund. The fund will be financed by a general or special fund appropriation and by grants or transfers from governmental or private sources.

Should a local subdivision transfer a portion of its open space money to the fund, that money may be used by the Foundation only for the purchase of easements within the subdivision transferring the money.

Allocation of the Fund. Beginning in fiscal year 1979 and in each fiscal year thereafter, half of the money made available to the fund will be allotted equally to all counties for general purchases. No matching funds from the county are required.

The other half of the funds will be allotted to those counties having an approved program[4] for matching purposes. Those matching purchases will be funded 60 percent by the state and 40 percent by the county with a maximum annual contribution of $1 million by the fund to any one county.

In any given fiscal year, general and matching purchases described previously will be made from July 31 through January 31. Funds not expended on a county basis during that period will be used to make additional purchases from April 1 through May 29. These additional purchases will be made on a nonmatching, statewide basis.

Because of the complexity of the fund's distribution, Figure 1 summarizes the procedure.

[4] Foundation approval may be granted provided that:
a. County agrees to contribute 40 percent of the cost of any easement acquired by the Foundation under the matching purchases program. County may set a limit on their contribution.
b. Any county program to preserve agricultural land must preserve land that at least meets the minimum standards set for the approval of districts by the Foundation.

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Figure 1, Schedule of procedures for purchase of easements by the Foundation.[5]

July 31	January 31		April 1	May 29
File application to sell an easement	ALLOTTED PURCHASES (allotted to counties)		ADDITIONAL PURCHASES (allotted statewide)	
	GENERAL (Totally state funded)[a]	MATCHING (60% state 40% county)[b]	GENERAL only[c]	

[a] Each county limited to 1/23 of half the total amount to be allotted.
[b] Each county with an approved, local agricultural land preservation program is eligible to receive an equal share of half the total amount to be allotted. No county may receive more than $1 million per fiscal year under this provision.
[c] There is no county limit. Offers are tendered statewide on the basis of the bid price and the discount of that price below the appraised value of the easement.

An example of how funds would be distributed to a county might help illustrate the procedure.[6] If the total amount to be allotted were $10 million, each county could receive, for general allotted purchases, 1/23 of $5 million or $217,400.

If a county with an approved program were to appropriate $500,000 of local funds and transfer open space funds of $167,000, it would have a total county share of matching funds of $667,000. These figures are summarized in Figure 2. If there were only four such counties with approved programs, each would be eligible to receive the maximum of $1 million matching allotment. Funds not allotted for matching purchases would become available for additional purchases after April 1.

If instead of $667,000 the county had appropriated only $400,000, the 60 percent state contribution would have been limited to $600,000. Funds not allotted for matching purchases would become available for additional purchases after April 1.

[5] Senate Finance Committee, Floor Report, Bill No. SB 297, Maryland Agricultural Land Preservation Foundation, March 31, 1977, p. 13.
[6] *Ibid.*, p. 14.

Figure 2, Summary of funds available for purchasing easements in a sample county.

Alloted General Purchases			$ 217,400
Alloted Matching Purchases			
County contribution (40% of matching funds)			
Local funds	$500,000		
Open space funds	$167,000	667,000	
State (Foundation) contribution (60%)		1,000,000	$1,667,000
Total available for allotted purchases in county			$1,884,400

Easement Restrictions. Restrictions will apply to all land divisions of less than 1 acre per single dwelling. The easement shall indicate that residential subdivision for commercial purposes is not permitted. It will, however, permit construction of one house for each of the children of the seller of the easement.

Easement Application Procedure. The written application must meet the following requirements:

1. Be filed on or before July 31 of the fiscal year in which the application is to be considered.
2. Include the owner's asking price for the easement.
3. Include a complete description of the land.

Easement Application Review Procedure. After a complete written application has been received, it must go through the following steps:

1. Foundation must notify the appropriate county governing body.
2. County governing body must notify the County Agricultural Preservation Advisory Board of the application.
3. County Agricultural Preservation Advisory Board will hold a hearing if so requested by:
   a) a majority of the members of the Board, or
   b) a majority of the members of the county governing body, or
   c) the applicant.

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4. County Agricultural Preservation Advisory Board will recommend approval or disapproval to the county governing body.
5. County governing body will advise the Foundation as to local approval or disapproval of the application. Disapproval of the application by the county governing body prevents the Foundation's approving the application.
6. Foundation approves or disapproves the purchase in accordance with the following:
   a) Land on which an easement is to be sold must meet all the standards required for formation of a district.
   b) Priority of approval for purchase[7] is determined by a ranking system based on the discount of the asking price below the easement value, as a percentage of the easement value. (An example of the discount computation will follow under *Formula* on page 9.)
   [Note: Foundation may approve purchases only to the extent that funds are available.]
7. Foundation approval of purchase requires approval by a majority of the board members at large and recommendation of the state treasurer and the secretary of agriculture.
8. Foundation makes an offer to buy an easement. Offer will contain the specific terms of the purchase.
9. Landowner must accept or reject the offer within 30 days.
10. Foundation must notify landowners whose applications were rejected and state the reasons. If the rejection is for reasons other than insufficient funds, the landowner may not reapply on the same terms until 2 years after the date of the original application.

The Foundation's Offer to Buy. If funds are available to purchase easements and if the land meets all other criteria, offers to buy easements will be made to selected landowners. As is the case when any government agency purchases

[7] Types of purchases and source of money for the fund are described under *Allocation of the Fund*, page 5, and Figure 1, page 6.

something, offers will be made to the lowest bidder. Unlike merchandise on which specifications can be carefully stated, each piece of agricultural land is unique. Important variables include proximity to roads and to metropolitan areas, slope, soil type, and size. Because of the inherent variability in land characteristics, selecting the low bidder requires computing a ratio which enables a comparison between ratios for different pieces of land.

By utilizing a ratio which enables a comparison of different farms, the variability resulting from the characteristics mentioned previously, i.e., location, size, productivity, is reduced, if not eliminated. Thus, ratios from various pieces of farmland can be compared directly. Bids in the form of an asking price are put into a formula which includes market value and agricultural value of the land. As a product of the computation, the "lowest bidder" has the highest ratio. Thus, offers to buy easements are first made to the landowners whose ratios are the largest.

Formula. The ratio is computed with the following formula:

$$\text{Ratio} = \frac{\text{fair market value} - \text{agricultural value} - \text{asking price}}{\text{fair market value} - \text{agricultural value}}$$

Recognizing that fair market value minus agricultural value is the same as easement value,[8] the formula becomes:

$$\text{Ratio} = \frac{\text{easement value} - \text{asking price}}{\text{easement value}}$$

Should a landowner set his asking price equal to the easement value, the ratio equals zero. No easements will be purchased at prices higher than the difference between fair market value and agricultural value. Should a landowner be anxious to sell the easement, he may be willing to set his asking price at less than the easement value. By so doing, he is offering the easement at a dis-

[8] For a detailed discussion of easement value, see Bellows, William J., *The Use of Easements in Controlling Land Use*, Maryland Agri-Economics, Cooperative Extension Service, September, 1976, p. 3. Under provisions of this law, the value of the easement is determined by appraisal.

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lump-sum payment. Should this be done, the Foundation is obligated to:

1. Retain in the fund sufficient money to pay the landowner in accordance with the schedule, and
2. pay the landowner annually interest on the unpaid balance at the rate of 0.25 percent less than that earned on the money retained in the fund.

Restrictions Imposed by Easement. Residential subdivision for commercial purposes is not permitted. The landowner who originally sold the easement to the Foundation may request permission to use 1 acre or less for a dwelling for his and his children's use. Such permission will be granted only once for that owner and each child. Housing for tenants is permitted as long as the construction does not exceed one tenant house per 100 acres..

No restrictions are imposed on the farmer's right to post his property. That is, sale of an easement does not grant the public any rights of access or use of the property.

Duration of Easements. Easements purchased by the Foundation are to be held by the Foundation as long as profitable farming on the land is feasible.

Termination of Easements. Twenty-five years from the date of sale of the easement, the landowner may request that the easement be reviewed for possible termination. Should termination be requested, the Foundation must reach a decision within 180 days; this decision must be based on an inquiry which must include the following:

1. An on-site inspection of the land.
2. A public hearing conducted by the Foundation within the county containing the land. Adequate public notice must be given.

The Foundation can approve termination only if the county governing body approves. Foundation approval requires a majority vote of the board members at-large. In addition, the secretary and the state treasurer must approve.

Repurchase of Easement. Once the termination of the easement is approved, the landowner may repurchase the easement by paying to the Foundation the difference at that point in time between fair market value and agricultural value. These values are determined by an appraisal

count, the value of which is equal to easement value minus asking price. The formula has thus become:

$$\text{Ratio} = \frac{\text{discount}}{\text{easement value}}$$

The lower the asking price, the larger the discount and the ratio. Thus, those landowners most anxious to sell their easements may set low asking prices and consequently have high ratios. As was stated earlier, the use of the ratio is not affected by either the number of acres or the price per acre and therefore provides a ranking mechanism for comparing the attractiveness of all bids.

An Example. The following example shows how the ranking system would work for three hypothetical farmers.

	Fair Market Value	Agricultural Value	Asking Price
Farmer A	$2,500	$500	$1,000
Farmer B	1,000	750	200
Farmer C	4,750	750	2,500

The discount ratio for each farmer is calculated as follows:

$$\text{Farmer A: } \frac{\$2{,}500 - 500 - 1{,}000}{\$2{,}500 - 500} = \frac{1{,}000}{2{,}000} = .5$$

$$\text{Farmer B: } \frac{\$1{,}000 - 750 - 200}{\$1{,}000 - 750} = \frac{50}{250} = .2$$

$$\text{Farmer C: } \frac{\$4{,}750 - 750 - 2{,}500}{\$4{,}750 - 750} = \frac{1{,}500}{4{,}000} = .375$$

Ranked by discount ratio in descending order:

	Ratio	Price
1. Farmer A	.5	$1,000
2. Farmer C	.375	2,500
3. Farmer B	.2	200

Despite having the lowest asking price, farmer B is ranked third because his discount is only 20 percent below the easement value. Farmers A and C are 50 percent and 37.5 percent below, respectively.

At the time of settlement, the landowner and the Foundation may agree upon a time payment schedule (not more than 10 years) instead of a

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conducted at the landowner's expense. Should the landowner fail to repurchase the easement within 180 days of the appraisal, the landowner must wait 5 years before reapplying to terminate the easement.

Condemnation Rights. Any state or county agency may acquire by condemnation land which is under an agricultural preservation easement. The agency, however, is required to pay the landowner fair market value less the amount paid to the landowner for the easement.

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MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION

FY'82 Easement Sale Applications
Ranking for Additional Purchases

COUNTY	FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ acre	AG-USE VALUE	AG-USE VALUE	DEVELOPMENT RIGHTS VALUE	DEVELOPMENT RIGHTS VALUE/ acre	RATIO	COUNTY RANK	STATEWIDE RANK
Harford	12-03-81-04	KREIDER, Sidney QUALLS, James	201.16	$ 73,626	$ 366	$419,350	$2,085	$310,000	$ 1,541	$109,350	$ 544	.67	2	1
Carroll	06-10-79-10B	GRAYSON, Victor & Mary	38.0	38,000	1,000	117,800	3,100	72,200	1,900	$ 45,600	$1,200	.83	7	2
Carroll	06-12-81-02	BOWMAN, Dennis P. & Stephen	110.0	99,900	900	311,500	2,806	194,600	1,753	$116,812	$1,052	.85	8	3
Caroline	05-07-80-04	DEAN, Charles & Nellie	332.82	166,410	500	556,800	1,673	363,100	1,091	193,700	582	.86	2	4
Carroll	06-01-80-05C	KREIT, George A. & Dorothy	211.0	100,000	474	402,100	1,906	286,100	1,356	116,000	550	.86	9	5
Carroll	06-06-80-11A	LAMON, Herbert & Betty Lou	75.33	53,730	700	193,226	2,565	132,962	1,765	60,264	800	.87	10	6
Harford	12-03-79-03C	KREIDER, Sidney & Mildred	68.9	37,743	547	140,000	2,032	96,500	1,400	43,500	631	.87	3	7
Carroll	06-01-80-05A	STALEY, Harry W. & Jo Paulette	85.9	45,500	530	243,000	2,829	191,000	2,224	52,000	605	.88	11	8
Carroll	06-01-80-14A	HAINES, Fern R.	179.95	97,000	539	475,800	2,644	366,800	2,038	109,000	606	.89	12	9
Carroll	06-02-81-03A	LOWMAN, Frances M.	152.88	137,133	897	351,600	2,299	198,700	1,299	152,900	1,000	.90	13	10
Carroll	06-02-80-15A	LYNCH, G. Paul & Judith C.	93.0	96,720	1,040	255,750	2,750	148,800	1,600	106,950	1,150	.90	14	11
Washing.	21-23-80-01	CARR, Robert E. & Phyllis J.	243.64	230,000	944	725,500	2,977	476,000	1,953	249,000	1,022	.92	1	12
Carroll	06-01-80-23	ROELECKE, Fred. Oscar Jr.	161.0	96,000	600	290,600	1,805	185,700	1,153	104,900	651	.92	15	13

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MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION

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Ranking for Additional Purchases

COUNTY	FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ acre	AG-USE VALUE	AG-USE VALUE	DEVELOPMENT RIGHTS VALUE	DEVELOPMENT RIGHTS VALUE/ acre	RATIO	COUNTY RANK	STATEWIDE RANK
Carroll	06-01-80-05B	SMITH, Barbara P.	41.5	$ 25,000	$ 602	$171,600	$4,135	$144,600	$3,484	$27,000	$ 651	.93	16	14
Harford	12-04-79-02B	RICHARDSON, Charles & James	225.91	128,316	567	490,575	2,172	354,375	1,569	136,200	603	.94	4	15
Washing.	21-06-80-02A 02B	FORD, Lloyd B. Dale, James, Donna	176.59	141,272	800	358,000	2,027	209,000	1,184	149,000	844	.95	2	16
Carroll	06-01-80-02	BANKARD, Robt.	135,69	90,250	665	258,000	1,901	163,000	1,201	95,000	700	.95	17	17
Carroll	06-02-80-16D	CLOSE, Sharon & Connie	59.72	59,718	1,000	149,300	2,500	86,600	1,450	62,700	1,050	.95	18	18
Carroll	06-07-80-18	MANN, Roland & Kathleen	138.86	141,637	1,020	366,264	2,638	220,461	1,587	145,803	1,050	.97	19	19
Caroline	05-03-81-03	MacDONALD, Marvin & Norma Jean	109.6	71,240	650	191,800	1,750	119,550	1,090	72,250	659	.99	3	20
Howard	13-04-80-04B	NICHOLS, Arthur G. Jr.	258.0	318,680	1,240	877,200	3,400	558,500	2,165	318,700	1,235	1.0	4	21
Carroll	06-01-81-09	ROELECKE, Frederick O. Jr.	140.0	84,000	600	244,000	1,743	140,000	1,000	84,000	600	1.0	20	22
Howard	13-03-80-02A	CLARK, John L.	93.85	101,000	1,076	319,000	3,399	218,000	2,323	101,000	1,076	1.0	5	23
Caroline	05-04-80-09	RIECK, Victor & Vera	112.46	80,971	720	202,350	1,799	122,550	1,089	79,800	709	1.01	4	24
Howard	13-04-80-04C	WARFIRLD, Albert G.	34.42	32,697	949	120,475	3,500	88,175	2,562	32,300	938	1.01	6	25
Carroll	06-04-79-04C	DAVIDSON, Ira & Mary	115.15	113,653	987	326,115	2,832	216,724	1,882	109,391	949	1.04	21	26

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MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION

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Ranking for Additional Purchases

COUNTY	FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ acre	AG-USE VALUE	AG-USE VALUE	DEVELOPMENT RIGHTS VALUE	DEVELOPMENT RIGHTS VALUE/ acre	RATIO	COUNTY RANK	STATEWIDE RANK
Caroline	05-07-81-02 (A-79-05)	CARROLL, Dawson & Phyllis	109.5	82,125	750	200,000	1,826	121,200	1,106	78,800	719	1.04	5	27
Carroll	06-02-79-11	KIRBY, John C. & Patricia	201.26	150,000	745	384,000	1,908	243,000	1,207	141,000	701	1.06	27	28
Howard	13-04-80-07A	HOBBS, Charles & Shirley	192.08	250,000	1,302					233,332	1,215	1.07	7	29
Carroll	06-02-81-03B	MATHIAS, Malcolm & Elizabeth	150,86	180,000	1,193	377,150	2,500	211,200	1,399	165,950	1,126	1.08	23	30
Howard	13-04-80-04E	WARFIELD, A. Gallatin III, Marsha Anne	49,0	63,700	1,300	156,800	3,200	98,000	2,000	58,800	1,200	1.08	8	31
Carroll	06-02-81-01B	WISE, Betty W.	65.63	68,250	1,039	150,950	2,300	88,600	1,349	62,350	950	1,09	24	32
Carroll	06-10-81-06 (A-80-02)	KURTZ, Kenneth E. & Elizabeth	35.28	35,000	992	98,787	2,800	67,034	1,900	31,753	900	1.10	25	33
Carroll	06-10-80-22B	STONESIFER, Earle K.	190.0	150,000	792	454,536	2,392	321,963	1,694	132,573	697	1.13	26	34
Carroll	06-03-80-27A	MOWBRAY, George	97.5	78,000	800	238,875	2,450	170,625	1,750	68,250	700	1.14	27	35
Carroll	06-02-81-01A	YOUNG, John D. & Dorothy	296.8	311,682	1,050	653,000	2,200	400,700	1,350	252,300	850	1.23	28	36
Anne Arundel	02-07-81-04A	TUCKER, Charles R. & Miriam	38	102,600	2,700	167,600	4,410	83,900	2,207	83,700	2,202	1.23	5	37
Carroll	06-10-81-07	SMITH, Charles & Alberta	102.93	77,197	750	175,000	1,700	113,200	1,100	61,800	600	1.25	29	38
Carroll	06-03-80-21A	STILES, John & Charlotte	41.66	36,900	885	108,316	2,600	79,154	1,900	29,162	700	1.26	30	39

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COUNTY	FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ acre	AG-USE VALUE	AG-USE VALUE	DEVELOPMENT RIGHTS VALUE	DEVELOPMENT RIGHTS VALUE/ acre	RATIO	COUNTY RANK	STATEWIDE RANK
Carroll	06-03-80-21B	STILES, HEATH John, Charlotte Billy, Betty	68.87	61,200	888	179,062	2,600	130,853	1,900	48,209	700	1.27	31	40
Howard	13-04-81-03	OAKLAND FARMS ASSC. Mrs, K. Barrow	113.0	144,075	1,275	335,448	2,969	226,000	2,000	109,448	969	1.32	9	41
Anne Arundel	02-07-80-01A (A-79-01)	SHEPHERD, Lila C. (Ashby Jr.)	131.0	183,400	1,400	276,765	2,112	139,450	1,064	137,315	1,048	1.33	6	42
Carroll	06-10-81-10	WATKINS, BILO Luzier	120.75	163,012	1,350	338,100	2,800	217,350	1,800	120,750	1,000	1.35	32	43
Carroll	06-03-81-04	BEACHTEL, Martin G. & Agnes	134.8	128,060	950	350,480	2,600	256,120	1,900	94,360	700	1.36	33	44
Carroll	06-01-81-08	MARTIN, Kenneth L. & Phyllis	137.44	115,000	837	247,400	1,800	164,900	1,200	87,500	600	1.39	34	45
Baltimore	03-07-81-04A	STULL, Helen A. & Henry C.	100.19	100,000	998	220,400	2,199	150,300	1,500	70,100	699	1.42	7	46
Anne Arundel	02-07-81-12	LANDSDALE, John Jr.	388.86	582,500	1,400	934,000	2,404	543,200	1,398	390,000	1,004	1.49	7	47
Garrett	11-07-80-04	RILEY, D. Milton	105.00	63,600	606	84,000	800	42,000	400	42,000	400	1.51	2	48
Washington	21-04-80-07A 07B	LOWMAN, Oscar F. Sr. Marguerite M.	158,0	484,180	867	665,000	1,191	350,000	627	315,000	564	1.53	3	49
Howard	13-04-80-06C	GREY, Charles G. & Elizabeth	130.35	130,347	1,000	414,650	3,181	330,350	2,534	84,300	647	1.55	10	50
Harford	12-04-81-03	SMITH, Milton E. & Ruth Z.	156.05	156,050	1,000	322,200	2,065	242,000	1,551	80,000	513	1.95	5	51

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FY'82Easement Sale Applications
Ranking for Additional Purchases

COUNTY	FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ acre	AG-USE VALUE	AG-USE VALUE	DEVELOPMENT RIGHTS VALUE	DEVELOPMENT RIGHTS VALUE/ acre	RATIO	COUNTY RANK	STATEWIDE RANK
Balto.	03-05-81-06	HICKORY HILL FARM	152.00	269,158	1,770	425,600	2,800	296,000	1,947	129,600	852	2.08	8	52
Balto.	03-05-81-07	HICKORY HILL FARM	341.07	617,336	1,810	989,105	2,900	764,000	2,240	225,105	660	2.74	9	53
Balto.	03-07-81-02	NACINCIK, John S. & Dixie B.	151.4	278,100	1,800	319,000	2,064	209,250	1,354	100,750	652	2.76	10	54
Balto.	03-10-81-05	MANOR VIEW FARMS	102.0	214,200	2,100	346,800	3,400	283,560	2,780	63,240	620	3,38	11	55

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ALLEGANY COUNTY

FY'82 Easement Sale Applications

FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ Acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ Acre	AG-USE VALUE	AG-USE VALUE/ Acre	DEV. RIGHTS VALUE	DEV. RIGHTS VALUE ACRE	RATIO	RANK
01-16-80-02	MILTONBERGER, John A. Jr. & Hilda G.	68.36	$71,778	$ 1,050	$ 121,500	$ 1,777	$ 90,500	$ 1,323	$ 31,000	$ 453.00	2.31	1

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ANNE ARUNDEL COUNTY

FY'82 Easement Sale Applications

FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ Acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ Acre	AG-USE VALUE	AG-USE VALUE/ Acre	DEV. RIGHTS VALUE	DEV. RIGHTS VALUE ACRE	RATIO	RANK
02-07-80-02A	BRIDGMAN, Eveleth W.	148.0	$ 296,000	$ 2,000	$ 639,000	$ 4,453	$ 260,000	$ 1,757	$ 399,000	$ 2,696	.74	1
02-07-80-02B	MURRAY, Sue H. STOTZ, Sally M.Edwards	68.60	$ 137,200	$ 2,000	$ 307,540	$ 4,483	$ 122,320	$ 1,783	$ 185,220	$ 2,700	.74	2
02-07-80-02C, D & E	MURRAY, James & Alice	63.8	$ 127,600	$ 2,000	$ 307,720	$ 4,823	$ 135,460	$ 2,123	$ 172,000	$ 2,696	.74	3
02-07-81-11A	WILSON, Emily H.	181.74	$ 290,784	$ 1,600	$ 506,146	$ 2,785	$254,436	$ 1,400	$ 251,710	$ 1,385	1.15	4
02-07-81-04A	TUCKER, Charles R. & Miriam	38	$ 102,600	$ 2,700	$ 167,600	$ 4,410	$ 83,900	$ 2,207	$ 83,700	$ 2,202	1.23	5
02-07-80-01A (A-79-01)	SHEPHERD, Lila C. (Ashby Jr.)	131.0	$ 183,400	$ 1,400	$ 276,765	$ 2,112	$ 139,450	$ 1,064	$ 137,315	$ 1,048	1.33	6
02-07-81-12	LANDSDALE, John Jr.	388.36	$ 582,500	$ 1,400	$ 934,000	$ 2,404	$ 543,200	$ 1,398	$ 390,000	$ 1,004	1.49	7

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BALTIMORE COUNTY

FY'82 Easement Sale Applications

FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ Acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ Acre	AG-USE VALUE	AG-USE VALUE/ Acre	DEV. RIGHTS VALUE	DEV. RIGHTS VALUE ACRE	RATIO	RANK
03-07-81-01A	CHENOWETH, Vernon H. & Frances	294.06	$ 291,060	$ 989.79	$ 676,350	$ 2,300	$426,400	$ 1,450	$ 249,950	$ 850	1.16	1
03-07-81-01B	BERG, Jos. R.& Alvina D.	78.24	80,400	1054	184,800	2,361	123,200	1,574	61,600	787	1.30	2
03-05-80-02	PRICE, Carroll E & Mary E.	104.0	90,850	874.0	286,000	2,750	217,000	2,086	69,000	663	1.32	3
03-07-80-06B	McGINNIS, Carroll M. and Miriam	154.75	155,000	1001	340,500	2,200	224,500	1,450	116,000	749	1.33	4
03-05-80-01A	COLHOUN, Dan. W. Jr.	99.26	100,000	1025	272,350	2,743	198,300	1,997	74,050	746	1.35	5
03-07-80-05B	GARRETT, Curtis E & Nancy L.	280.12	286,000	1020	588,000	2,099	378,000	1,349	210,000	749	1.36	6
03-07-81-04A	STULL, Helen A. & Henry C.	100.19	100,000	998	220,400	2,199	150,300	1,500	70,100	699	1,42	7
03-05-81-06	HICKORY HILL FARM	152.00	269,158	1770	425,600	2,800	296,000	1,947	129,600	852	2.08	8
03-05-81-07	HICKORY HILL FARM	341.07	617,336	1810	989,105	2,900	764,000	2,240	225,105	660	2.74	9
03-07-81-02	NACINCIK, John S. & Dixie B.	154.5	278,100	1800	319,000	2,064	209,250	1,354	100,750	652	2.76	10
03-10-81-05	MANOR VIEW FARMS,	102.0	214,200	2100	346,800	3,400	283,560	2,780	63,240	620	3,38	11

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CALVERT COUNTY

FY'82 Easement Sale Applications

FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ Acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ Acre	AG-USE VALUE	AG-USE VALUE/ Acre	DEVELOPMENT RIGHTS VALUE	DEV. RIGHTS VALUE ACRE	RATIO	RANK
04-07-81-01B	BOURNE, James & Kathleen	144.0	$ 216,000	$ 1,500	$ 447,400	$ 3,107	$ 155,500	$ 1,080	$ 291,900	$ 2,027	.74	1
04-01-80-01	HORSMON, Richard Phyllis&Gertrude	71.64	$ 69,989	$ 977	$ 163,000	$ 2,275	$ 90,000	$ 1,256	$ 73,000	$ 1,019	.96	2
04-03-80-02A	STALLINGS, Bruce & Thelma	94.19	$ 95,037	$ 1,009	$ 224,500	$ 2,383	$ 126,500	$ 1,343	$ 98,000	$ 1,040	.97	3

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CAROLINE COUNTY

FY'82 Easement Sale Applications

FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ Acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ Acre	AG-USE VALUE	AG-USE VALUE/ Acre	DEVELOPMENT RIGHTS VALUE	DEV. RIGHTS VALUE ACRE	RATIO	RANK
05-04-81-01A	Rieck, Victor & Vera	89.3	$ 51,794	$ 580	$ 159,900	$ 1,790	$ 97,000	$ 1,086	$ 62,900	$ 704	.82	1
05-07-80-04	Dean, Charles & Nellie	332.82	$166,410	$ 500	$ 556,800	$ 1,673	$ 363,100	$ 1,091	$193,700	$ 582	.86	2
05-03-81-03	MacDonald, Marvin & Norma Jean	109.6	$ 71,240	$ 650	$ 191,800	$ 1,750	$ 119,550	$ 1,090	$ 72,250	$ 659	.99	3
05-04-80-09	Rieck, Victor & Vera	112.46	$ 80,971	$ 720	$ 202,350	$ 1,799	$ 122,550	$ 1,089	$ 79,800	$ 709	1.01	4
05-07-81-02	Carroll, Dawson & Phyllis	109.5	$ 82,125	$ 750	$ 200,000	$ 1,826	$ 121,200	$ 1,106	$ 78,800	$ 719	1.04	5

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CARROLL COUNTY

FY'82 Easement Sale Applications

FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ Acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ Acre	AG-USE VALUE	AG-USE VALUE/ Acre	DEVELOPMENT RIGHTS VALUE	DEV. RIGHTS VALUE ACRE	RATIO	RANK
06-01-81-05A (A-80-14)	HAINES, Fern R. & Louise	113.81	$ 70,000	$ 615	$ 227,600	$ 1,998	$ 125,200	$ 1,100	$ 102,400	$ 900	.68	1
06-04-80-04A	POOL, Roland W. & Dorothy B.	152.52	$122,016	$ 800	$ 403,200	$ 2,644	$ 235,528	$ 1,544	$ 167,772	$ 1,100	.73	2
06-10-81-11	MCINTRE, T. Byron	164.50	$ 97,282	$ 591	$ 370,195	$ 2,250	$ 238,570	$ 1,450	$ 131,625	$ 800	.74	3
06-02-81-02	WARNER, Robert & Audrey	205.0	$184,500	$ 900	$ 553,500	$ 2,700	$ 307,500	$ 1,500	$ 246,000	$ 1,200	.75	4
06-01-81-05B	SANDERS, Mark A. & Helen L.	105.94	$ 63,564	$ 600	$ 201,300	$ 1,900	$ 116,500	$ 1,100	$ 84,800	$ 800	.75	5
06-10-80-03	COOK, Charles & Theida	130.0	$117,000	$ 900	$ 377,000	$ 2,900	$ 234,000	$ 1,800	$ 143,000	$ 1,100	.82	6
06-10-79-10B	GRAYSON, Victor & Mary	38.0	$ 38,000	$ 1000	$ 117,800	$ 3,100	$ 72,200	$ 1,900	$ 45,600	$ 1,200	.83	7
06-12-81-02	BOWMAN, Dennis P. & Stephen	110.0	$ 99,900	$ 900	$ 311,500	$ 2,806	$ 194,600	$ 1,753	$ 116,812	$ 1,052	.85	8
06-01-80-05C	KREIT, George A. & Dorothy	211.0	$100,000	$ 474	$ 402,100	$ 1,906	$ 286,100	$ 1,356	$ 116,000	$ 550	.86	9
06-06-80-11A	LAMON, Herbert & Betty Lou	75.33	$ 53,730	$ 700	$ 193,226	$ 2,565	$ 132,962	$ 1,765	$ 60,264	$ 800	.87	10
06-01-80-05A	STALEY, Harry W. & Jo Paulette	85.9	$ 45,500	$ 530	$ 243,000	$ 2,829	$ 191,000	$ 2,224	$ 52,000	$ 605	.88	11
06-01-80-14A	HAINES, Fern R.	179.95	$ 97,000	$ 539	$ 475,800	$ 2,644	$ 366,800	$ 2,038	$ 109,000	$ 606	.89	12

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CARROLL COUNTY

FY'82 Easement Sale Applications

FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ Acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ Acre	AG-USE VALUE	AG-USE VALUE/ Acre	DEVELOPMENT RIGHTS VALUE	DEV. RIGHTS VALUE ACRE	RATIO	RANK
06-02-81-03A	LOHMAN, Frances M.	152.88	$ 137,133	$ 897	$ 351,600	$ 2,299	$ 198,700	$ 1,299	$ 152,900	$ 1,000	.90	13
06-02-80-15A	LYNCH, G. Paul & Judith C.	93.0	$ 96,720	$1,040	$ 255,750	$ 2,750	$ 148,800	$ 1,600	$ 106,950	$ 1,150	.90	14
06-01-80-23	ROELECKE, Frederick Oscar Jr.	161.0	$ 96,000	$ 600	$ 290,600	$ 1,805	$ 185,700	$ 1,153	$ 104,900	$ 651	.92	15
06-01-80-05B	SMITH, Barbara P.	41.5	$ 25,000	$ 602	$ 171,600	$ 4,135	$ 144,600	$ 3,484	$ 27,000	$ 651	.93	16
06-01-80-02	BANKARD, Robt. & Louis Brown	135.69	$ 90,250	$ 665	$ 258,000	$ 1,901	$ 163,000	$ 1,201	$ 95,000	$ 700	.95	17
06-02-80-16D	CLOSE, Sharon & Connie	59.72	$ 59,718	$1,000	$ 149,300	$ 2,500	$ 86,600	$ 1,450	$ 62,700	$ 1,050	.95	18
06-07-80-18	MANN, Roland & Kathleen	138.86	$ 141,637	$1,020	$ 366,264	$ 2,638	$ 220,461	$ 1,587	$ 145,803	$ 1,050	.97	19
06-01-81-09	ROELECKE, Frederick O. Jr.	140.0	$ 84,000	$ 600	$ 244,000	$ 1,743	$ 140,000	$ 1,000	$ 84,000	$ 600	1.0	20
06-04-79-04C	DAVIDSON, Ira & Mary	115.15	$ 113,653	$ 987	$ 326,115	$ 2,832	$ 216,724	$ 1,882	$ 109,391	$ 949	1.04	21
06-02-79-11 (A-79-05)	KIRBY, John C. & Patricia	201.26	$ 150,000	$ 745								
06-02-81-03B	MATHIAS, Malcolm & Elizabeth	150.86	$ 180,000	$1,193	$ 377,150	$ 2,500	$ 211,200	$ 1,399	$ 165,950	$ 1,126	1.08	23
06-02-81-01B	WISE, Betty W.	65.63	$ 68,250	$1,039	$ 150,950	$ 2,300	$ 88,600	$ 1,349	$ 62,350	$ 950	1.09	24

CARROLL COUNTY

FY'82 Easement Sale Applications

FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ Acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ Acre	AG-USE VALUE	AG-USE VALUE/ Acre	DEVELOPMENT RIGHTS VALUE	DEV. RIGHTS VALUE ACRE	RATIO	RANK
06-10-81-06 (A-80-02)	KURTZ, Kenneth E. & Elizabeth	35.28	$ 35,000	$ 992	$ 98,787	$ 2,800	$ 67,034	$ 1,900	$ 31,753	$ 900	1.10	25
06-10-80-22B	STONESIFER, Earle K.	190.0	$150,000	$ 792	$454,536	$ 2,392	$321,963	$ 1,694	$ 132,573	$ 697	1.13	26
06-03-80-27A	MOWBRAY, George	97.5	$ 78,000	$ 800	$238,875	$ 2,450	$170,625	$ 1,750	$ 68,250	$ 700	1.14	27
06-02-81-01A	YOUNG, John D. & Dorothy	296.8	$311,682	$1,050	$653,000	$ 2,200	$400,700	$ 1,350	$ 252,300	$ 850	1.23	28
06-10-81-07	SMITH, Charles & Alberta	102.93	$ 77,197	$ 750	$175,000	$ 1,700	$113,200	$ 1,100	$ 61,800	$ 600	1.25	29
06-03-80-21A	STILES, John & Charlotte	41.66	$ 36,900	$ 885	$108,316	$ 2,600	$ 79,154	$ 1,900	$ 29,162	$ 700	1.26	30
06-03-80-21B	STILES, HEATH John, Charlotte Billy, Betty	68.87	$ 61,200	$ 888	$179,062	$ 2,600	$130,853	$ 1,900	$ 48,209	$ 700	1.27	31
06-10-81-10	WATKINS, BILO Luzier	120.75	$163,012	$1,350	$338,100	$ 2,800	$217,350	$ 1,800	$ 120,750	$1,000	1.35	32
06-03-81-04	BEACHTEL, Martin G. & Agnes	134.8	$128,060	$ 950	$350,480	$ 2,600	$256,120	$ 1,900	$ 94,360	$ 700	1.36	33
06-01-81-08	MARTIN, Kenneth L. & Phyllis	137.44	$115,000	$ 837	$247,400	$ 1,800	$164,900	$ 1,200	$ 87,500	$ 600	1.39	34

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FY'82 EASEMENT SALE APPLICATIONS

Frederick County

FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ Acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ Acre	AG-USE VALUE	AG-USE VALUE/ Acre	DEVELOPMENT RIGHTS VALUE	DEV. RIGHTS VALUE ACRE	RATIO	RANK
10-14-81-10	FAWLEY, Terry & Teresa	150.83	$ 135,747	$ 900	$307,100	$2,036	$194,000	$1,286	$ 113,100	$749	1.20	1
10-01-80-04	REMSBERG, Willis D. & Edith	157.0	$ 196,250	$1250	$446,900	$2,846	$295,400	$1,881	$ 151,500	$964	1.30	2
10-14-81-06	STRITE, Galen & Jane	105.0	$ 50,000	$ 476	$229,100	$2,181	$191,700	$1,825	$ 37,400	$356	1.34	3
10-20-81-04	VAN FOSSEN, Edgar & Helen	129.0	$ 160,000	$1240	$278,100	$2,155	$171,300	$1,327	$ 106,800	$827	1.50	4
10-17-81-09	ANTHONY, Bernard & Barbara	104.0	$ 85,800	$ 825	$159,800	$1,536	$113,000	$1,086	$ 46,800	$450	1.83	5

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FY'82 Easement Sale Applications

GARRETT COUNTY

FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ Acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ Acre	AG-USE VALUE	AG-USE VALUE/ Acre	DEV. RIGHTS VALUE	DEV. RIGHTS VALUE ACRE	RATIO	RANK
11-16-80-03	ZOOK, Joseph	176.45	$ 107,070	$ 606	$ 228,500	$ 1,295	$ 153,000	$ 867	$ 75,500	$ 428	1.41	1
11-07-80-04	RILEY, D. Milton	105	$ 63,600	$ 606	$ 84,000	$ 800	$ 42,000	$ 400	$ 42,000	$ 400	1.51	2

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HARFORD COUNTY

FY'82 Easement Sale Applications

FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ Acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ Acre	AG-USE VALUE	AG-USE VALUE/ Acre	DEVELOPMENT RIGHTS VALUE	DEV. RIGHTS VALUE ACRE	RATIO	RANK
12-03-80-04	Ruff, James H.	199.0	$ 84,515	$ 425	$436,500	$ 2,193	$300,000	$ 1,506	$136,500	$ 686	.62	1
12-03-81-04	Kreider, Sidney Qualls, James	201.16	73,626	366	419,350	2,085	310,000	1,541	109.350	544	.67	2
12-03-79-03C	Kreider, Sidney & Mildred	68.9	37,743	547	140,000	2,032	96,500	1,400	43,500	631	.87	3
12-04-79-02B	Richardson, Charles & James	225.91	128,316	567	490,575	2,172	354,375	1,569	136,200	603	.94	4
12-04-81-03	Smith, Milton E. & Ruth Z.	156.05	156,050	1,000	322,200	2,065	242,000	1,551	80,000	513	1.95	5

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HOWARD COUNTY

FY'82 Easement Sale Applications

FILE	OWNERS/ NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ Acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ Acre	AG-USE VALUE	AG-USE VALUE/ Acre	DEVELOPMENT RIGHTS VALUE	DEV. RIGHTS VALUE ACRE	RATIO	RANK
13-04-80-06A	Wessel, Henry L. Jr.	114.0	$ 131,670	$ 1,155	$387,600	$ 3,400	$245,900	$2,157	$141,700	$1,243	.93	1
13-05-79-04A	Warfield, Barb. L.	340.0	490,000	1,441	1,190,000	3,500	680,000	2,000	510,000	1,500	.96	2
13-04-80-06D	Patrick, Mary, James & David	91.0	91,000	1,000	303,600	3,336	208,550	2,291	95,050	1,045	.96	3
13-04-80-04B	Nichols, Arthur G. Jr.	258.0	318,680	1,240	877,200	3,400	558,500	2,165	318,700	1,235	1.0	4
13-03-80-02A	Clark, John L.	93.85	101,000	1,076	319,000	3,399	218,000	2,323	101,000	1,076	1.0	5
13-04-80-04C	Warfield, Albert G.	34.42	32,697	949	120,475	3,500	88,175	2,562	32,300	938	1.01	6
13-04-80-04E	Warfield, A. Gallatin III. Marsha Anne	49.0	63,700	1,300	156,800	3,200	98,000	2,000	58,800	1,200	1.08	7
13-04-81-03	Oakland Farms Assoc. Mrs. K. Barrow	113.0	144,075	1,275	335,448	2,969	226,000	2,000	109,448	969	1.32	8
13-04-80-06C	Grey, Charles G. & Elizabeth	130.35	130,347	1,000	414,650	3,181	330,350	2,534	84,300	647	1.55	9
13-04-80-07A	Hobbs, Charles & Shirley	192.08	250,000	1,302	Arbitration - January 82							

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MONTGOMERY COUNTY

FY'82 Easement Sale Applications

FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ Acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ Acre	AG-USE VALUE	AG-USE VALUE/ Acre	DEVELOPMENT RIGHTS VALUE	DEV. RIGHTS VALUE ACRE	RATIO	RANK
15-01-80-02	SPATES, Alfred & Mane	296.46	$ 441,584	$ 1,500	$ 650,000	$ 2,193	$ 353,460	$ 1,192	$ 296,540	$ 1,000	1.49	1

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WASHINGTON COUNTY

FY'82 EASEMENT SALE APPLICATIONS

FILE	NAMES	ACREAGE	ASKING PRICE	ASKING PRICE/ Acre	FAIR MARKET VALUE	FAIR MARKET VALUE/ Acre	AG-USE VALUE	AG-USE VALUE/ Acre	DEVELOPMENT RIGHTS VALUE	DEV. RIGHTS VALUE ACRE	RATIO	RANK
21-23-80-01	CARR, Robert E. & Phyllis J.	243.64	$ 230,000	$ 944	$ 725,500	$ 2,977	$ 476,000	$ 1,953	$ 249,000	$ 1,022	.92	1
21-06-80-02A 02B	FORD, Lloyd B. Dale M. James A. Donna L.	176.59	$ 141,272	$ 800	$ 358,000	$ 2,027	$ 209,000	$ 1,184	$ 149,000	$ 844	.95	2
21-04-80-07A 07B	LOHMAN, Oscar F. Sr. Marguerite M.	558.0	$ 484,180	$ 867	$ 665,000	$ 1,191	$ 350,000	$ 627	$ 315,000	$ 564	1.53	3

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Senator WALLOP. Mr. Musselman, is it your experience that the basic problem, in Maryland, at least, is the overhanging threat of capital gains? Is that what defines your "cross purposes"?

Mr. MUSSELMAN. That is No. 1. Second, the State is extending public funds for the acquisition of development rights easements. Very basically, the fact that the offers may be higher in order to cover what capital gains taxes would be due is to our detriment in implementing a program that has very strong public purposes.

Senator WALLOP. How do you make the judgment about which properties the State acquires easements on?

Mr. MUSSELMAN. There is a very selective screening process that involves, first, eligibility—minimum eligibility—requirements for inclusion of land in agricultural preservation districts which is a prerequisite to easement sale. Once we have received the easement sale applications, there are in each of the counties agricultural preservation advisory boards that first screen all of the applications for an easement sale. According to our eligibility requirements and any locally adopted more stringent eligibility requirements, once that has occurred then those applications are prioritized in two ways: First, according to the ratio of asking price to easement value, which orients us to those that have the greatest discount below value; and, second, we rank those applications according to the productive capability of land, to the extent of development pressure, and other factors that relate to the size of the district in which the farm is located and generally the agricultural potential of the area in which the farm is located. So those are the criteria we use in different ways.

The principal criteria is that price criteria, the ratio of asking price to easement value at the end of the line, after all other minimum eligibility criteria are met.

Senator WALLOP. Does this program provide greater pressures on other lands that don't qualify?

Mr. MUSSELMAN. I wouldn't say so. One of the minimum eligibility requirements for land in agricultural preservation districts is that that land be outside of areas planned for growth and development.

In Maryland, with a very strong county government system and very well advanced planning systems, each of the counties has planned growth areas and plans over the next 10 to 20 years for a water and sewer system extension where agricultural preservation districts are precluded.

Senator WALLOP. What about your experience, which must be still pretty small, with the new provisions of the 1980 tax law changes.

Mr. MUSSELMAN. First, I am not fully aware of all the changes. We have not dealt with easement donations. In fact, since the inception of the foundation we have received an easement donation on one farm. The principal direction or the aspect of our program is easement acquisition. Of those from whom we have acquired easements at a value lower than the appraised value of the development rights, I know of no one who has claimed a donation or who has been successful in claiming a donation as a charitable deduction.

Senator WALLOP. The easements which you acquire, are they in perpetuity?

Mr. MUSSELMAN. They are in perpetuity. It's a negative easement that is in perpetuity; but there is a provision in that deed of easement that after a period of 25 years there is a possibility of a review of the easement. And with a very, very stringent review process, where agriculture is no longer feasible, it may be possible for a repurchase of the easement by the landowner at that time at full value at that time.

The fallacy in that is that after 25 years if agriculture is no longer feasible, the agricultural use value of that land is likely to be somewhere between nil and minimal, so the repurchase value, if feasible, would be very close to or at fair market value of the land.

Senator WALLOP. I appreciate your coming down here this morning. Your whole written statement will be inserted in the record.

Mr. MUSSELMAN. Thank you very much.

Senator WALLOP. Thank you, sir.

The next witness is Mr. Douglas P. Wheeler, president of the American Farmland Trust in Washington.

STATEMENT OF DOUGLAS P. WHEELER, PRESIDENT, AMERICAN FARMLAND TRUST, WASHINGTON, D.C.

Mr. WHEELER. Good morning, Senator.

Senator WALLOP. Good morning.

Mr. WHEELER. If I could, I would like to summarize a more lengthy statement that has been submitted to the committee.

Senator WALLOP. By all means. The whole statement will be in the record.

Mr. WHEELER. Basically what we would like to share with you is that the American Farmland Trust, which is a private nonprofit organization committed solely to the protection of farmland and farming opportunities, is very much supportive of S. 1713. We congratulate Senator Mathias and the other cosponsors for their initiative in bringing this legislation to the fore.

We believe that enactment of this bill is very much consistent with the policy that the Congress has recently enacted through the Farmland Protection Policy Act. You will recall that as part of the farm bill enacted in December 1981 there has been adopted as the law of the land a policy which states that the protection of farmland and ranchland in the United States is an important objective of the Federal Government. It is encumbent upon us, we believe, to implement that objective in ways such as this which will help to effect its prime purposes.

We do believe that there are some changes which could be made to this legislation to further improve its attractiveness as one of those tools which are available to farmers and ranchers in order that their land be protected in exchange for their commitment that it not be developed.

We do not believe, for instance, that there is appropriate reason for the requirement of the reinvestment of proceeds, a current requirement of S. 1713. The reason for this is very much as stated by Mr. Musselman when he suggested that there are a number of circumstances in which a farmer or rancher may elect to dispose of

their development rights, and this decision occurs at a number of points during the career of the farmer or rancher. It typically does not involve a reinvestment, and it would be unfair, we believe, to require a reinvestment in a circumstance where it is the farmer or rancher's intention to recover his equity. The public purpose having been served by the restriction on further development of the land, no real further purpose is served by the requirement that he invest in additional land if he is not at that time electing to do so for purposes of advancing his farm or ranch activity.

We would also recommend that the very beneficial provisions of the law relative to tax treatment of capital gains be extended to those transactions, Senator, which are described as "transfer of development rights" in addition to those having to do with acquisition of development rights.

A good example of the transfer of development rights program is underway now in Montgomery County, Md., under the broad umbrella of the State program described by Mr. Musselman. And in that instance there is a farmer-to-private-purchaser transaction with the same result, except that public funds are saved in the process. There is no public acquisition.

Yet, if this bill were enacted as drafted, that seller would be taxed for capital gains, and the seller to a State would not. We feel that that would unduly inhibit experimentation with transfer of development rights which, on balance, is probably a more cost-effective way of achieving the same objective.

We believe—and this addresses a provision of section 170(h) which was referred to by the representative of the Treasury—that the test having to do with significant public benefit be deemed to be met, and there is some ambiguity in the law about this at present, if a State or local government which has adopted a public conservation policy certifies that a public benefit will result from the donation or bargain sale of development rights.

Further, we recommend that the committee give consideration to allowing a credit against Federal income as opposed to a deduction in cases where there are gifts of these development rights or of partial interests in these development rights. The reasons for our making that recommendation, Senator, have to do with experience in Wyoming, and elsewhere, where we have learned that farmers and ranchers are often unable to make use of a deduction because of their difficult economic straits, where their income is not high enough to warrant use of a deduction but where a credit could mean the difference between the decision to make a gift and not to make a gift.

Those are the principle points that I wanted to cover. I did want to add that, in addition to the Maryland program, there are six or seven now underway in the country and additional programs being considered by States almost in every region of the country including a program adopted as recently as November of last year by New Jersey, in which the expenditure of some $50 million over a period of years is contemplated.

Notwithstanding that fact, I believe that the estimates of revenue forgone are somewhat high. I would guess that the total dollar volume of transactions now being contemplated or being conducted on an annual basis is something in the range of $15 to $20 million,

total volume; thus, the capital gains tax effect would be something like a fraction of that, up to one-fifth, at the maximum capital gains rate. Thus, we are probably talking about revenue foregone closer to $5 to $10 million than $20 to $25 million.

I might say that I, too, was concerned by the position of the Treasury Department that it sees no valid reason for the enactment of incentives to the protection of farmland. I think, notwithstanding that position, the Congress and the President have stated that farmland protection is an important public policy objective; we now have the Farmland Protection Policy Act; and we need to do everything we can within reason and obviously in an equitable sense to effect the purposes of that law.

I think it would be helpful, and certainly we would be willing to work with the committee staff, with Treasury, to make those refinements, those technical refinements, which Treasury thinks might make the bill more acceptable. But I think we ought not to take "No" for an answer on the policy question, but proceed to make revisions to the bill which would make it more acceptable from a technical standpoint.

Senator WALLOP. I certainly agree with that

[The prepared statement of Douglas P. Wheeler follows:]

TESTIMONY OF DOUGLAS P. WHEELER, PRESIDENT, AMERICAN FARMLAND TRUST, ON S. 1713, A BILL TO AMEND THE INTERNAL REVENUE CODE TO ENCOURAGE STATE AND LOCAL PROTECTION OF PRIME FARMLAND, BEFORE THE SUBCOMMITTEE ON ENERGY AND AGRICULTURAL TAXATION OF THE SENATE FINANCE COMMITTEE, WASHINGTON, D.C., MAY 24, 1982

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, THE AMERICAN FARMLAND TRUST (AFT) IS A PRIVATE, NONPROFIT ORGANIZATION FOUNDED IN 1980 FOR THE PURPOSE OF PROTECTING AGRICULTURAL LANDS AND PROMOTING FARMING OPPORTUNITY THROUGH PUBLIC EDUCATION, POLICY DEVELOPMENT AND THE DEMONSTRATION OF INNOVATIVE MARKET-ORIENTED TECHNIQUES DESIGNED TO ENABLE FARMERS TO RECOVER THE EQUITY IN THEIR PROPERTY WITHOUT HAVING TO SELL THEIR LAND OUT OF AGRICULTURE. AFT IS THE PRINCIPAL NATIONAL ORGANIZATION WITH EXPERTISE IN THE PROBLEM OF AGRICULTURAL LAND CONVERSION AND THE METHODS OF PROTECTING THIS IRREPLACEABLE RESOURCE -- AMERICA'S NUMBER ONE RESOURCE, THE LAND THAT FEEDS OUR PEOPLE AND THE WORLD. AFT IS FUNDED ENTIRELY BY THE CONTRIBUTIONS OF PRIVATE PHILANTHROPIES, CORPORATIONS AND OVER 22,000 ORGANIZATIONAL MEMBERS THROUGHOUT THE COUNTRY.

AFT IS PLEASED THAT SENATOR MATHIAS HAS SPONSORED S. 1713, LEGISLATION THAT WOULD HELP STATES AND LOCAL GOVERNMENTS AS WELL AS FARMERS TO KEEP PRIME FARMLAND IN AGRICULTURAL PRODUCTION BY REMOVING SOME OF THE FEDERAL TAX BARRIERS TO THE METHOD OF PROTECTING FARMLAND KNOWN AS THE PURCHASE OF DEVELOPMENT RIGHTS. ABOUT A HALF DOZEN STATES AND SEVERAL COUNTIES NOW USE THIS METHOD, WHICH INVOLVES THE PURCHASE BY GOVERNMENT OF THE RIGHT TO DEVELOP FARMLAND -- ALSO KNOWN AS A CONSERVATION

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EASEMENT OR RESTRICTIVE COVENANT -- FROM PROPERTY OWNERS. THIS GIVES THE FARMER A FINANCIALLY REALISTIC ALTERNATIVE TO BEING FORCED TO SELL HIS ENTIRE INTEREST IN THE LAND, GENERALLY TO A REAL ESTATE DEVELOPER, SO THAT HE CAN RECOVER HIS EQUITY AND EITHER INVEST IT IN NECESSARY FARM IMPROVEMENTS OR USE IT AS A RETIREMENT PENSION.

THE STATES AND COUNTIES THAT USE THIS METHOD ARE VERY SELECTIVE ABOUT THE FARMLAND ON WHICH THEY PURCHASE DEVELOPMENT RIGHTS. GENERALLY, THEY LOOK ONLY TO THE MOST PRODUCTIVE OR PRIME FARMLAND, LOCATED WITHIN DISCRETE RURAL AREAS, OFTEN CALLED AGRICULTURAL DISTRICTS, WITH THE INTENTION OF PROTECTING CONTIGUOUS BLOCKS OF LAND THAT CAN BE FARMED WITHOUT INTERFERENCE FROM NEIGHBORING RESIDENTIAL OR COMMERCIAL LAND USES. IN ALL CASES, THIS METHOD OF PROTECTING FARMLAND IS USED IN THE CONTEXT OF THE BROADER GOAL OF PROVIDING HOUSING AS WELL AS SAFEGUARDING FOOD RESOURCES, OF TRYING TO BALANCE THESE NEEDS.

BY AND LARGE, PURCHASE OF DEVELOPMENT RIGHTS PROGRAMS ARE WORKING FAIRLY WELL. OF ALL OF THE METHODS OF FARMLAND PROTECTION BEING USED IN THE UNITED STATES, THIS METHOD SEEMS TO BE THE MOST POPULAR AMONG FARMERS THEMSELVES. IT NOT ONLY PROTECTS FARMLAND, BUT ALSO SEEMS TO HELP RESTORE THE PSYCHOLOGY OF PERMANENCE WITHIN AGRICULTURAL COMMUNITIES FOR WHOM THE FUTURE HAD BECOME MORE AND MORE UNCERTAIN BECAUSE, PRIOR TO THE ADOPTION OF PURCHASE OF DEVELOPMENT RIGHTS PROGRAMS, AGRICULTURE SEEMED DOOMED BY THE ECONOMIC IMPERATIVE OF SELLING

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GOOD FARMLAND OUT OF AGRICULTURE AS THE ONLY WAY AVAILABLE TO FARMERS WHO WANTED TO RETIRE.

BUT THE PURCHASE OF DEVELOPMENT RIGHTS HAS A MAJOR DRAWBACK THAT EXPLAINS WHY THIS METHOD OF PROTECTING FARMLAND AND FARMING OPPORTUNITY HAS NOT BEEN ADOPTED BY MORE JURISDICTIONS. THAT DRAWBACK IS, OF COURSE, ITS COST. EVEN THOUGH STATES AND COUNTIES TRY TO GET THE MAXIMUM LEVERAGE FOR EACH DOLLAR THEY INVEST, BY BEING SELECTIVE ABOUT THE FARMLAND THEY DEAL WITH, SOMETIMES BY PURCHASING DEVELOPMENT RIGHTS ONLY WHEN A FARM MUST BE SOLD AND SOMETIMES BY REQUIRING LANDOWNERS TO COMPETE WITH EACH OTHER IN A KIND OF REVERSE AUCTION THAT RESULTS IN LOWER PURCHASE OFFERS, THERE STILL DOESN'T SEEM TO BE ENOUGH MONEY TO GO AROUND, TO PROTECT ALL THE PRIME FARMLAND THAT SHOULD BE PROTECTED.

HERE IS WHERE THE FEDERAL GOVERNMENT UNCONSCIOUSLY PLAYS A ROLE IN STATE AND LOCAL PURCHASE OF DEVELOPMENT RIGHTS PROGRAMS. BECAUSE THE SALE OF DEVELOPMENT RIGHTS BY FARMERS IS SUBJECT TO FEDERAL TAXATION, STATES AND THEIR POLITICAL SUBDIVISIONS ARE IN EFFECT PAYING THE FEDERAL GOVERNMENT TO PROTECT THEIR OWN FARMLAND. THE PURCHASE MONEY THAT COMES FROM STATE AND LOCAL TAXPAYERS WINDS UP IN THE COFFERS OF THE FEDERAL GOVERNMENT. NEEDLESS TO SAY, THIS TENDS TO INFLATE THE COST TO STATES AND LOCALITIES OF PROECTING FARMLAND BY PURCHASING DEVELOPMENT RIGHTS. AND THIS IS AN ADDITIONAL EXPENSE THAT THEY NEED NOT, AND SHOULD NOT HAVE TO BEAR.

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THAT IS WHY AFT VIEWS THE MATHIAS BILL AS VERY IMPORTANT TO THE SUCCESS OF PURCHASE OF DEVELOPMENT RIGHTS PROGRAMS, AS WELL AS RESTORING PRINCIPLES OF FEDERALISM IN THE MANAGEMENT OF LAND RESOURCES. S. 1713 WOULD ELIMINATE FEDERAL TAXATION OF PURCHASE OF DEVELOPMENT RIGHTS PROGRAMS AND, THUS, ALLOW STATES AND LOCALITIES TO LEVERAGE THEIR LIMITED FUNDS MORE EFFICIENTLY IN PROTECTING THE NATION'S AGRICULTURAL LANDS. IT WOULD ALSO, OF COURSE, RESULT IN LESS REVENUE TO THE FEDERAL GOVERNMENT, BUT AFT BELIEVES THAT IT WOULD RETURN A PUBLIC BENEFIT EQUAL TO OR GREATER THAN THE INVESTMENT THAT THIS REVENUE REPRESENTS IN THE FUTURE OF AGRICULTURE. JUST AS IMPORTANTLY, IT WOULD HELP ENCOURAGE STATE AND LOCAL EFFORTS TO PROTECT PRIME AGRICULTURAL LANDS, AN OBJECTIVE SUBSCRIBED TO BY CONGRESS IN ADOPTING THE FARMLAND PROTECTION POLICY ACT AS A TITLE OF THE 1981 FARM BILL.

WHILE AFT SUPPORTS S. 1713 AS A HIGH-LEVERAGE INVESTMENT BY THE FEDERAL GOVERNMENT IN STATE AND LOCAL EFFORTS TO PROTECT THE LAND THAT FEEDS ALL AMERICANS, WE BELIEVE THAT THE LEGISLATION COULD BE IMPROVED AND SIMPLIFIED TO A CERTAIN EXTENT. WE WOULD RESPECTFULLY SUGGEST THE FOLLOWING CHANGES THAT IN OUR VIEW WOULD MAKE THE BILL EVEN MORE RESPONSIVE TO THE PRACTICAL REALITIES OF PROTECTING AGRICULTURAL LAND.

1. THE NONRECOGNITION OF CAPITAL GAIN ON THE SALE OF DEVELOPMENT RIGHTS SHOULD NOT BE CONDITIONED UPON REINVESTMENT OF THE PROCEEDS IN ADDITIONAL FARMLAND OR CAPITAL IMPROVEMENTS TO FARMING OPERATIONS. AS A PRACTICAL MATTER,

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IT IS GENERALLY YOUNGER FARMERS WHO HAVE A STRONG COMMITMENT TO AGRICULTURE AS A PROFESSION AND OLDER FARMERS WHO PLAN TO RETIRE WHO ARE NOW SELLING DEVELOPMENT RIGHTS PURSUANT TO STATE AND LOCAL PROGRAMS. YOUNGER FARMERS WILL CONTINUE TO REINVEST THE PROCEEDS OF DEVELOPMENT RIGHTS SALES IN ADDITIONAL LAND OR FARM IMPROVEMENTS, AND OLDER FARMERS WILL CONTINUE NOT TO HAVE AN INCENTIVE TO DO SO, REGARDLESS OF THE REINVESTMENT REQUIREMENT OF THE BILL. MOREOVER, REQUIRING SUCH REINVESTMENT BY YOUNGER FARMERS AND SOME OLDER FARMERS -- THE OVER-55 EXCLUSION IS LIMITED TO A FRACTION OF THE VALUE OF MOST DEVELOPMENT RIGHTS SALES -- WOULD LIMIT THEIR OPTIONS IN A WAY THAT COULD WORK AT CROSS PURPOSES WITH STATE AND LOCAL PROGRAMS. IN SOME CASES, DEVELOPMENT RIGHTS ARE SOLD TO RAISE CASH TO DEAL WITH PERSONAL EMERGENCIES THAT WOULD OTHERWISE FORCE THE SALE OF THE ENTIRE FARM.

EVEN MORE SIGNIFICANTLY, HOWEVER, THE REINVESTMENT REQUIREMENT DILUTES THE PRINCIPLE THAT STATES AND THEIR POLITICAL SUBDIVISIONS SHOULD NOT HAVE TO PAY THE FEDERAL GOVERNMENT TO PROTECT THEIR FARMLAND. BECAUSE, AS A PRACTICAL MATTER, THE REINVESTMENT REQUIREMENT WOULD NOT SIGNIFICANTLY CHANGE THE WAY THAT FARMERS MAKE DECISIONS ABOUT SELLING DEVELOPMENT RIGHTS, IT SHOULD BE DELETED ON PRINCIPLE.

2. THE SALE OF DEVELOPMENT RIGHTS TO QUALIFIED PRIVATE PARTIES PURSUANT TO STATE OR LOCAL PROGRAMS SHOULD ALSO RESULT IN NONRECOGNITION OF CAPITAL GAIN. AS THE LEGISLATION

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NOW STANDS, ONLY SALES OF DEVELOPMENT RIGHTS TO STATE OR LOCAL AGENCIES WOULD QUALIFY FOR NONRECOGNITION OF GAIN. HOWEVER, THERE ARE A COUPLE OF VARIATIONS ON PURCHASE OF DEVELOPMENT RIGHTS PROGRAMS THAT INVOLVE THE SALE OF SUCH RIGHTS BY FARMERS TO PRIVATE PARTIES WHICH, IN EFFECT, ACT AS INSTRUMENTALITIES OF THE STATE OR LOCAL GOVERNMENT IN CARRYING OUT THE PURPOSE OF THEIR PROGRAMS.

THE FIRST VARIATION IS BEING USED BY MONTGOMERY COUNTY, MARYLAND, AMONG OTHER JURISDICTIONS, AND IS CALLED THE TRANSFER OF DEVELOPMENT RIGHTS. RATHER THAN PURCHASING THE RIGHTS ITSELF, LOCAL GOVERNMENT HAS ESTABLISHED A PROGRAM UNDER WHICH PRIVATE HOUSING DEVELOPERS MAY PURCHASE SUCH RIGHTS FROM FARMERS AND, WITH THE SANCTION OF THE COUNTY, APPLY THEM TO OTHER PROPERTIES WHERE HIGHER-DENSITY GROWTH IS ENCOURAGED IN ORDER TO BUILD MORE HOUSES THAN THEY WOULD OTHERWISE BE ENTITLED TO, THUS RECOVERING THE COST OF THE RIGHTS. THE TRANSFER OF DEVELOPMENT RIGHTS IS A HYBRIDIZATION OF LOCAL POLICE POWER AND THE FREE MARKET THAT HOLDS GREAT PROMISE AS AN EXTREMELY COST-EFFECTIVE METHOD OF NOT ONLY PROTECTING FARMLAND, BUT ALSO OF ENCOURAGING AFFORDABLE HOUSING. S. 1713 COULD ALSO SERVE BOTH OBJECTIVES BY PROVIDING THAT PRIVATE PARTIES CERTIFIED BY THE STATE OR LOCALITY THAT HAS ADOPTED A PURCHASE OR TRANSFER OF DEVELOPMENT RIGHTS PROGRAM MAY ALSO BE THE PURCHASER OF DEVELOPMENT RIGHTS, ENTITLING THE SELLER TO NONRECOGNITION OF GAIN.

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THE SECOND VARIATION OF PURCHASE OF DEVELOPMENT RIGHTS PROGRAMS INVOLVING PRIVATE PARTIES AS PURCHASERS IS, IN EFFECT, A PARTNERSHIP BETWEEN PRIVATE AGRICULTURAL CONSERVATION ORGANIZATIONS LIKE AFT AND STATE AND LOCAL GOVERNMENTS. FRANKLY, THERE ARE SOME FARMLANDS THAT ARE BEYOND THE REACH OF STATE OR LOCAL PURCHASE OF DEVELOPMENT RIGHTS PROGRAMS BECAUSE THE PUBLIC AGENCIES WHICH ADMINISTER THESE PROGRAMS SIMPLY CANNOT ACT QUICKLY ENOUGH TO MEET THE NEEDS OF THE FARMER, FOR EXAMPLE, WHERE THE FARMER NEEDS CASH IN A HURRY BUT THE BUDGET CYCLE OF THE STATE OR LOCALITY DOES NOT PERMIT THEM TO PURCHASE DEVELOPMENT RIGHTS IMMEDIATELY. IT IS IN SUCH CIRCUMSTANCES THAT ORGANIZATIONS LIKE AFT HAVE THEMSELVES PURCHASED FARMLAND DEVELOPMENT RIGHTS, OR SOMETIMES THE ENTIRE FARM, IN ANTICIPATION OF LATER SELLING DEVELOPMENT RIGHTS TO THE STATE OR LOCALITY, THUS PUTTING A VALUABLE FARM WITHIN THE REACH OF THE STATE OR LOCAL PROGRAM THAT OTHERWISE WOULD HAVE BEEN LOST. (INCIDENTALLY, WHEN AFT PURCHASES AN ENTIRE FARM AND LATER SELLS THE DEVELOPMENT RIGHTS, ITS POLICY IS TO SELL THE FARM ITSELF TO A QUALIFIED FARMER, GENERALLY A YOUNGER FARMER WHO WOULD NOT HAVE BEEN ABLE TO AFFORD THE LAND WITH THE DEVELOPMENT RIGHTS, AS SOON AS POSSIBLE.) S. 1713 COULD HELP STATE AND LOCAL PURCHASE OF DEVELOPMENT RIGHTS PROGRAMS BE EVEN MORE EFFECTIVE BY PROVIDING THAT PRIVATE ORGANIZATIONS CERTIFIED BY THE STATE OR LOCAL AGENCY MAY ALSO BE PURCHASERS OF DEVELOPMENT RIGHTS, ENTITLING THE SELLER TO NONRECOGNITION OF GAIN.

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3. SECTION 170 OF THE INTERNAL REVENUE CODE AS IT AFFECTS CHARITABLE DONATIONS OF FARMLAND DEVELOPMENT RIGHTS (CONSERVATION EASEMENTS) SHOULD BE FURTHER CLARIFIED, AND THE BILL SHOULD PROVIDE FOR A TAX CREDIT RATHER THAN A DEDUCTION FOR SUCH DONATIONS. S. 1713 ATTEMPTS TO CLARIFY SECTION 170 (172 IS A MISPRINT IN THE BILL) TO THE EFFECT THAT WHEN A FARMER SELLS DEVELOPMENT RIGHTS AT LESS THAN THEIR MARKET VALUE -- FOR EXAMPLE, IN THE REVERSE AUCTION SITUATION NOTED ABOVE, THE BARGAIN SALE QUALIFIES AS A CHARITABLE GIFT, ENTITLING THE SELLER TO A FEDERAL INCOME TAX DEDUCTION. THIS IS LAUDABLE AS ANOTHER EFFECTIVE WAY OF HELPING STATES AND LOCALITIES LEVERAGE THEIR PURCHASE OF DEVELOPMENT RIGHTS FUNDS, BUT MORE SIGNIFICANT PROBLEMS INHERENT IN SECTION 170 WOULD MAKE THIS PROVISION OF THE BILL A LARGELY INEFFECTIVE ONE.

SECTION 170 AS IT APPLIES TO DONATIONS OF INTERESTS IN FARMLAND NOW REQUIRES TAXPAYERS TO DEMONSTRATE THE THE GIFT OR BARGAIN SALE OF DEVELOPMENT RIGHTS IS PURSUANT TO A CLEARLY DELINEATED PUBLIC LAND CONSERVATION POLICY -- WHICH, PRESUMABLY, WOULD BE SATISFIED BY THE STATE OR LOCAL PURCHASE OF DEVELOPMENT RIGHTS PROGRAMS -- AND THAT THE CONSERVATION OR PROTECTION OF THE FARMLAND WILL RESULT IN A SIGNIFICANT PUBLIC BENEFIT. THESE QUALIFICATIONS WERE ADOPTED BY CONGRESS APPARENTLY TO ENSURE THAT NOT JUST ANY LAND WOULD QUALIFY, AND THAT STATE AND LOCAL JUDGEMENTS ABOUT THE IMPORTANCE OF PROTECTION LAND WOULD PREVAIL. HOWEVER, THAT IS NOT HOW THIS IMPORTANT TOOL FOR PROTECTING FARMLAND HAS WORKED IN

PRACTICE. NO REGULATIONS UNDER SECTION 170 HAVE YET BEEN ISSUED BY IRS IN THE 18 MONTHS SINCE THIS SECTION WAS AMENDED TO INCLUDE FARMLAND. MOREOVER, THE QUESTION OF WHETHER A PUBLIC BENEFIT WILL RESULT FROM THE DONATION OR BARGAIN SALE OF DEVELOPMENT RIGHTS NOW RESTS WITH IRS, RATHER THAN WITH STATE AND LOCAL GOVERNMENTAL AGENCIES WHO HAVE THE EXPERTISE TO MAKE SUCH JUDGEMENTS.

WE WOULD SUGGEST THAT CONGRESS' INTENT COULD BE CARRIED OUT WITH A SIMPLE AMENDMENT TO SECTION 170, PROVIDING THAT THE SIGNIFICANT PUBLIC BENEFIT TEST IS MET IF THE STATE OR LOCAL GOVERNMENT WHICH HAS ADOPTED THE CLEARLY DELINEATED POLICY REFERRED TO IN THE SECTION, CERTIFIES THAT SUCH A PUBLIC BENEFIT WILL RESULT. IF ADDITIONAL FEDERAL DISCRETION IS REQUIRED, WE WOULD SUGGEST THAT THE U.S. DEPARTMENT OF AGRICULTURE BE EMPOWER TO CERTIFY SUCH TRANSACTIONS -- AS THE INTERIOR DEPARTMENT NOW DOES FOR HISTORIC PRESERVATION EASEMENT DONATIONS -- WITH IRS EXERCISING ITS TRADITIONAL ROLE OF DEALING WITH QUESTIONS OF LAND VALUATION.

4. FINALLY, WE WOULD URGE THAT, SUBJECT TO THE QUALIFICATIONS OF SECTION 170 WITH RESPECT TO THE ELIGIBILITY OF SPECIFIC FARMLAND, THERE BE ALLOWED A CREDIT AGAINST FEDERAL INCOME, GIFT AND ESTATE TAX LIABILITY EQUAL TO THE VALUE OF FARMLAND DEVELOPMENT RIGHTS OR CONSERVATION EASEMENTS, DONATED OUTRIGHT OR SOLD AT LESS THAN MARKET VALUE TO STATES, THEIR POLITICAL SUBDIVISIONS OR PRIVATE ORGANIZATIONS CERTIFIED BY STATES AND LOCALITIES AS ACTING PURSUANT TO THEIR FARMLAND

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PROTECTION PROGRAMS. THE RATIONALE FOR THIS SUGGESTED TAX CREDIT IS THAT DEDUCTIONS AGAINST INCOME OFFER VERY LITTLE INCENTIVE TO MOST FARMERS -- WHOSE INCOME, PARTICULARLY IN A DEPRESSED FARM ECONOMY, IS SMALL COMPARED TO THE VALUE OF THEIR DEVELOPMENT RIGHTS -- TO PARTICIPATE IN STATE AND LOCAL FARMLAND PROGRAMS OF THIS TYPE, OR TO PROTECT THEIR LAND THROUGH PRIVATE INITIATIVE BY DONATING DEVELOPMENT RIGHTS OUTRIGHT. SUCH A CREDIT WOULD GO A LONG WAY TOWARD RECOGNIZING THAT FARMERS SHOULD RECEIVE A BENEFIT EQUAL TO WHAT THEY GIVE UP BY DONATING INTERESTS IN THEIR FARMLAND FOR THE BENEFIT OF THE PUBLIC WHICH IS FED BY THIS RESOURCE. IT WOULD FURTHER LEVERAGE THE ABILITY OF STATES AND LOCALITIES TO PROTECT THEIR FARMLAND AND ENSURE THE ECONOMIC VIABILITY OF THEIR AGRICULTURAL INDUSTRIES AT A CRUCIAL TIME WHEN THIS INDUSTRY IS, MORE SO THAN OTHER INDUSTRIES, ON THE FINANCIAL ROPES. IN THIS RESPECT, IT COULD BE ONE OF THE MOST IMPORTANT INVESTMENTS THAT THE FEDERAL GOVERNMENT COULD MAKE, NOT ONLY IN SHORT-TERM ECONOMIC RECOVERY BUT ALSO IN LONG-TERM ECONOMIC STABILITY. FOR ULTIMATELY THE UNITED STATES RUNS ON THE OUTPUT OF ITS AGRICULTURE INDUSTRY. BECAUSE OF THE CERTIFICATION REQUIREMENTS THAT WE SUGGEST AS INTEGRAL TO THIS MEASURE, WE BELIEVE ITS COST WOULD BE RELATIVELY MINOR IN COMPARISON WITH THE SHORT AND LONG TERM BENEFITS TO THE NATION. IT COULD BE ONE OF THE MOST SIGNIFICANT THINGS THE FEDERAL GOVERNMENT COULD DO TO GIVE AGRICULTURE A SHOT IN THE ARM, WHILE LOOKING TOWARD ITS FUTURE HEALTH.

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Senator WALLOP. That is forever the case, literally. Without trying to criticize anybody in this administration, I have never seen the time the President has approached the revenue of the country from any perspective but the "revenue of the country." It just happens to be the nature of the beast that it works that way.

Mr. WHEELER. It is my recollection that the Treasury opposed the provisions of 170(h) to which they now point as the reason for not enacting this legislation.

Senator WALLOP. I clearly recall that.

Mr. WHEELER. Yes.

Senator WALLOP. The public-benefit concept is one which I think certainly we have to address. There has to be a means upon to do it—slipping outside of the issue in front of us—for instance, in the acquisition of certain "historic properties" for the National Park Service.

We get a lot of properties which are not historic and which cost us tons of money to maintain thereafter because there is no means by which to turn down those gifts. And I think that we have to do that responsibly here. Something more than what we are doing has to be done, I believe.

Mr. WHEELER. We agree with you, of course, because notwithstanding the slowdown in the economy and some kinds of residential construction, it remains the fact that we are losing something like 3 million acres of farm and ranch land a year. And we do need to take those actions which would retard that trend.

With respect to public benefit, some very useful standards were adopted in the enactment of 170(h). Regrettably, Treasury has not yet issued its regulations to implement that law, which, in a year and a half now since its enactment, has had a chilling effect on prospective donations.

I think if we had those regulations we would have a better idea of how Treasury intends to interpret the otherwise clear language of the Congress. It is our view, though, that its failure to implement that law has had a serious deleterious effect on prospective donations of easements.

I do agree with you that we should accept a rigorous test, and I think the test adopted in 170(h) is an adequate one.

Senator WALLOP. Well, perhaps one of the things that we should do directly is to find the means to trigger those regulations. If I don't miss my guess, when the regulations are triggered we will probably have to do something with the law to insist that the regulations finally go to the goal that it was sought to attain.

I guess what you are saying, though, is that, by virtue of the fact that they have not been issued, we really have no national record yet, which either we or they can find out if this works.

Mr. WHEELER. Yes. That being the case, we have encouraged those owners who are willing to take the risk to make donations, and the first of those were submitted in connection with returns for tax year 1981. We don't know yet how Treasury will respond to those in the absence of regulations.

But in the absence of that experience since 1980, I think it is a bit irresponsible for Treasury to suggest there has been an abuse of the law, or that there might be an abuse of the law. That was an-

other point raised in the 1980 deliberations, as I recall. And yet there were no examples brought forward of abuse.

I think, as Mr. Musselman's experience suggests and that of other States in which easements are now being bought suggest, it is very possible—at least to the satisfaction of the State of Maryland and seven other jurisdictions—to obtain fair valuation on this right which is being sold or given. It is very simply the difference between the highest and best use value, so-called, of the land and the agricultural value. And the State of Maryland is spending $5 or $6 million a year to buy those interests, presumably to the satisfaction of its legislators and its executive.

Senator WALLOP. I appreciate it, and we will press on with it.

Mr. WHEELER. Thank you, sir. We appreciate your leadership on this issue.

Senator WALLOP. Thank you very much.

[Whereupon, at 10:15 a.m., the hearing was concluded.]

[By direction of the chairman, the following communications were made a part of the hearing record:]

CARROLL COUNTY, MARYLAND
DEPARTMENT OF PLANNING AND DEVELOPMENT
225 N. Center Street
Westminster, Maryland 21157

Comments On S.1713

Reference	Comments
Section 1041(a) Nonrecognition of Gain	While a rollover provision is desirable, one that limits the rollover benefit to the acquisition of new farmland is not entirely desirable for two major reasons. First, farmers should be given the flexibility of reinvesting the development rights funds in whatever segment of their operation they deem necessary. It hardly seems equitable to penalize a farmer because he needs to use the money to build a new barn or grain drying facility or strengthen his beef or dairy herd instead of adding to the acreage of his farm. Second, while some farmers will undoubtedly use the money to acquire more land (from which they may then sell development rights... a continuous rollover situation), and while such rollovers will increase the acreage in preservation programs, such a situation, if carried to extremes, could have a snowballing effect that will allow a small number of farmers to amass vast acreages. Our concern is that the small farmer , particularly the young farmer just starting out, might not be able to compete with the larger property owners who, because of the rollover, are able to pay more (or pay on better terms) for the new farmland. Where such a rollover is required to gain a favorable tax treatment, we are concerned that a segment of the market is going to be at a competitive disadvantage in acquiring their first farms. We would strongly support a change in the proposed language of this bill to allow greater flexibility in the use

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Reference	Comments
	of money gained from the sale of development rights, provided any such uses related to or enhanced the productive capability of the farm.
Section 1041, (c)(2)	The "knowledge" standard proposed would be difficult to administer fairly and could establish an unrealistic burden of proof.

Such a standard might even be unnecessary under the Maryland program. In Maryland, a buyer who attempted (either alone or in collusion with the seller) to develop restricted land would be in clear violation of the recorded easement. In Maryland, the easement runs with the land and binds "heirs, successors and assigns". The State would be in a position to enforce the terms of the easement. Assuming vigorous enforcement by the State, it is highly unlikely that, at least in Maryland, the buyer would be in a position to jeopardize the seller's favored tax treatment through a breach of the easement provisions.

Also of concern is the apparent failure to state what time limit is applicable to the imposition of this "knowledge" standard on the taxpayer. Example: Taxpayer sells to purchaser land on which he has sold a development rights easement. Purchaser knows the land is restricted, but 1 year later, he attempts to develop it. Does taxpayer lose his favored treatment? Purchaser waits 5 years, 10 years, ...,etc. How far back might the IRS go to recapture benefits claimed by the taxpayer? Obviously, the farther back the recapture provisions extend, the more difficult it will be to prove "knowledge" (or the absence of knowledge, depending on who has the burden of proof).

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Reference	Comments
Section 128; One-time Exclusion of Gain From Sale of Farmland Development Rights By Individual Who Has Attained Age 55	Although the age 55 standard is comparable to the one-time exclusion provision applicable to residential sales, its utility here is questionable. According to the 1978 Census of Agriculture, Maryland had 18,727 farms. Of this total, 10,821 or 58% were operated by people under the age of 55 (of the 9,490 farms that were operated by full time farmers, 48% were operated by people under the age of 55). It seems clear that, in Maryland, the one-time exclusion will only give tax relief to a limited segment of the farming community. Farmland preservation programs, like Maryland's, are predicated on the principle that productive farmland must be preserved to insure adequate agricultural resources now and in the future. The Maryland program focuses on the attributes and qualities of the land, not the personal attributes of the individual who owns the land (except for a requirement that the land be managed in a way that is not a detriment to its productive capability and that the farm be a "working farm"). It appears that this underlying premise is somewhat at odds with a tax position that favors only a limited segment of the farming community and makes this distinction based on a personal attribute of the individual (age) that bears no rational relation to the productive manner in which the farm is managed. In fact, even though the farm economy as a whole is depressed, it may be that the young farmer needs the tax relief more than the farmer over age 55, having had less time to solidify his position in the market. Of course, one might assume that young farmers would be less likely to have a capital gains consequence from the sale of development rights anyway since they probably purchased their land recently and, therefore, have a high tax basis. However, this overlooks a sizable segment of the farming community that is

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in the 45-54 age group (25% of Maryland farms), who possibly purchased their land 20-30 years ago, and who, therefore, have low tax bases. It also overlooks the farmer who, through gift or devise, acquired their land at little or no cost.

Programs designed to preserve and protect productive agricultural land must be broad-based to be effective. In Carroll County, we have determined that it will take 100,000 acres in agricultural preservation to ensure a viable agribusiness community at the local level. Without that level of participation, some of the farm support services will go out of business or move to more lucrative areas.

Also important is that agricultural districts that are isolated and that cannot expand fall easy prey to the abuses of adjacent development. Districts that can expand to include adjacent farms receive a measure of protection from encroachment.

Distinctions, if they are appropriate, must be made on some rational basis that relates to the productive capacity of the land. Age is not a rational basis. If land is worth preserving, it is worth preserving whether the owner is 25 or 55 years old.

The pressures on farmers to remove land from agricultural production in favor of subdivision and construction transcend age groups. The pressures are more directly related to the financial needs of the farm operation. To the extent all segments of the farming community do not receive equal tax incentives to form districts and sell easements, it becomes increasingly difficult to promote the expansion of districts and easement restricted areas. When districts don't expand, they become targets for the abuses of adjacent development. When districts don't expand, the goal of preserving 100,000 acres becomes that much more difficult to attain.

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Reference	Comments
	Carroll County is very committed to the concept of district expansion and favors incentives that would promote such expansion. Conversely, it is our feeling that any incentive that is applied unevenly or on the basis of some qualification that does not relate to the productive capacity of the land could inhibit district expansion and hence, we would be concerned with such a measure.
Section 28(b) Limitations, (1) and (2)	The $100,000 limitation seems somewhat low for several reasons. First, a number of farms have very low taxable bases. On a larger farm, the $100,000 exclusion could be quickly used up. (In 1978, 24% of Maryland's farms were over 180 acres in size.) Second, the $100,000 exclusion apparently only applies to one sale. The question is raised (although the impact is unknown) as to how such a limitation might affect multi-farm operators (would they put all their farms in preservation programs if they could only receive a tax break on the first farm?). Would such a limitation also inhibit district expansion? It is noted that the $100,000 limitation would not be of such concern if greater flexibility was permitted in the use of money realized from the sale of development rights.
Section 128 (d) Special Rules, (2)	"Owned and used by the taxpayer". What is the effect of this qualification? Farming operations are units, even if certain portions of the property are not under continuous agricultural production. Does such a qualification ("owned and used") require active use of the land? If so, is such a requirement consistent with federal policies and programs that have paid farmers to hold land out of production? Our interpretation of the Maryland program, at the local level, has been that while a farm should be a working, productive farm to be included in the program, it is the productive capacity of that

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farm unit that warrants its inclusion in a district and not an evaluation of whether, at any given time, 200 acres should have been under cultivation as opposed to 150 acres. The program's focus is to preserve agricultural land that has a productive capability and is not to require some predetermined level of utilization beyond the threshhold of being a "working farm".

It is also our understanding that when appraisals are done under the Maryland program to determine the value of these easements, the appraisals reflect the farm as a unit. We would be somewhat concerned with any law or regulation that attempted to allocate value to only that portion of a farm under active use. It is possible that such a tax position would influence farmers to only put actively used areas into preservation programs. This would have the effect of breaking up farm units with a consequent loss in district continuity and the potential for expansion.

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Executive Secretary

June 2, 1982

Mr. Robert E. Lighthizer
Chief Counsel, Committee on Finance
Room 2227, Dirksen Building
Washington, DC 20510

RE: Testimony Regarding Senate Bill 1713
Introduced by Senator Mathias 10-7-81

Gentlemen:

As administrator of Howard County's farmland preservation program, I would like to lend my heartiest support to Senate Bill 1713. The bill's purpose of providing a financial incentive to landowners for protecting farmland by selling development rights reflects the type of support local programs using this tool need. Rather than entangle the federal government in yet another source of financial expenditure, the bill forces state and local governments to take the initiative in coming up with a funding mechanism acceptable to their citizenry. It is one thing to spend federally collected tax money on local farmland protection programs and quite another to provide a tax reduction incentive to individual landowners who participate in the protection effort. By requiring farmers below the age of 55 to reinvest the proceeds of an easement sale into a farm operation before becoming eligible for a tax waiver, a threefold benefit is realized: first, tangible proof of landowner commitment to long term farming is [illegible]sted

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with which to justify a federal tax exemption; second, local and state governments must make an equal (if not stronger) commitment in the form of legislation adoption and program funding long before a federal tax exemption to landowners can be made; third, localities will have the potential to benefit from a second round of landowner investment in new farm acreage--acreage that may not be otherwise protected due to a paucity of program funding. In short, what Senate Bill 1713 offers is the opporutnity for a quid pro quo relationship between federal, state and local governments in working toward the goal of protecting the nation's farmland resource.

The purchase of development rights is a unique and expensive protection tool, at least when viewed in the short term. Only a handful of states and four counties (King County, Washington; Suffolk County, New York; Howard and Calvert Counties in Maryland) have in place legislatively and financially viable purchase of development rights programs for farmland protection, but the list will undoubtedly lengthen as localities grapple with and resolve the dichotomy of farmland preservation and landowner compensation for such preservation.

Members of the federal government will have the satisfaction of knowing they took appropriate and effective action toward farmland protection in promoting a purchase of development rights farmland protection tool through passage of Senate Bill 1713. Toward realization

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of this end I lend full support for the bill and entreat you to do the same.

Dennis A. White
Agricultural Land Preservation
Administrator

W/s

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